

## Setting a fair case fee

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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 Office for Legal Complaints must set a case fee that lawyers who use the ombudsman service will be charged. The Legal Services Act is prescriptive; we must charge a fee. 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. We do not have the capacity to change this, as the rules are drawn from the Act and echo what Parliament intended.

Case fees are charges on lawyers and law firms whose customers file a complaint about them with the OLC following an unsuccessful attempt to resolve their dispute in-house. We are able to either charge a fee up front or at the end, and firms may have the fee waived if they meet the criteria set out in the Act.

Within these constraints, what we wish to do is to develop a structure for charging a fee which supports the role of an ombudsman scheme as an independent and impartial service assisting consumers of legal services and their lawyers resolve complaints. We want to be as fair as possible but our role is not to take sides or allocate blame. We will not use case fees as a form of punishment. Rather, we see the case fee as 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 draft scheme rules that we have published set out our proposed approach to case fees in chapter six. The proposed structure of the case fees in the scheme rules is a flat fee with a small number of 'free' cases per firm each year. The Act asks us to include a case fee in the scheme rules and this structure would mean that the OLC would recover a proportion of its costs each year in this way.

In publishing the scheme rules we did not include amounts or numbers in relation to the case fee. During the informal discussion about the scheme rules that preceded the current formal consultation we received a range of responses from inside and outside the profession indicating that the overall approach that we suggested seemed fair. The focus of interest was in the level of the fee and the proportion of funding that the OLC would anticipate from charging a case fee.

In this paper we have set out some questions to ask for views and evidence to help shape our approach to setting a case fee. This consultation will run for just over two months until 4 December 2009. We look forward to hearing your views.

### **Context: how the OLC will be funded**

The OLC business plan outlines the funding arrangements for the OLC and anticipated budgets for the implementation phase and then the steady state organisation. The full cost of the OLC, both for set-up and steady-state, will be recovered from the legal profession from a combination of a levy on the profession (to pay for the OLC and the Legal Services Board) and, once the Ombudsman scheme is launched, case fees charged to lawyers (but not complainants) for dealing with individual complaints.

This consultation does not cover aspects of OLC funding that will come from the levy on the legal profession. The levy is subject to separate consultation by the Legal Services Board.

As our business plan notes, any conclusions about the operating costs of the OLC after the launch of the scheme are necessarily highly provisional. As a consequence of this, we are at this stage consulting on indicative levels of the case fee structure. Given our limited knowledge about the level of demand we will face and how the case fee structure may impact on that demand, we intend to take a relatively cautious approach to setting the case fee. The feedback from the informal discussions about the draft scheme rules confirmed our preference to start the initial phase of OLC operation with low case fees, recovering only a small amount of the OLC cost via fees, with the majority of the cost being recovered via levy. The accompanying initial impact assessment is based, for illustrative purposes, on an initial assumption of recovery of approximately 10% of cost via fees and 90% via levy.

Adopting this approach will give us time to establish our operation and understand the real (as opposed to estimated) level of demand and actual cost of the ombudsman scheme. The Act allows us to re-visit the level of the case fee and we intend to review our approach within the first three years of operation. A review after an initial phase of operation will allow us to adjust the case fee structure accordingly.

### **Setting a fair case fee**

We have been guided by a number of principles in developing our approach to setting the case fee. We want the focus of the case fee to be on recovery of a proportion of OLC costs, in compliance with the requirements of the Act, while contributing to improving the quality of service provided by lawyers. We also want to implement a case fee structure that minimises unnecessary operational and administrative complexity and costs for the profession and for the OLC itself.

In addition, we aspire to creating a case fee system which has a constructive behavioural impact. We would like the fee to assist us to encourage good in-house complaints handling before complaints are raised with the OLC, and make sure the charging structure does not hinder, where complaints are brought to the OLC, early and informal resolution wherever possible.

Last, but certainly not least, we want to provide a case fee structure which is fair and minimises disproportionate impact on certain areas of the profession. At the discussion draft stage for the scheme rules, concerns were raised 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. In addition, it was said, firms operating in 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. It was

also suggested that a large proportion of women and black and ethnic minority lawyers work in small firms and some of these more contentious areas of law, and that a case fee may therefore impact on the profession in terms of equality and diversity. These are areas about which we are particularly interested in hearing views, especially about how any of these possible adverse impacts may be avoided.

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

**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.**

### Structure and level of the fee

In all of the possible options for setting the structure and level of a case fee, we have estimated amounts for the fee using the following factors:

- expected number of eligible complaints (cases) per year of approximately 14,000;
- that the fee will not be charged in around 10% of cases (meaning fees are reimbursed or not collected from firms who meet the criteria of the waiver provision set out in the Act);
- 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.

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

Our preferred approach to the structure of the case fees is as a flat fee of between £200 and £400 with a small number (two) of 'free' cases for each firm (or sole practitioner) each year. This echoes the approach taken by other ombudsman schemes and has the advantage of being relatively simple to administer. We are keen to keep the costs of having a case fee structure low, both for the OLC itself and also to keep administration costs low for the firms who use our service.

We also looked at other possible options for the structure of the fee. The other options are:

- a flat fee with no free cases allowed per year;
- a sliding fee (where a fee is charged but is less if a complaint is resolved informally and increases if a formal ombudsman decision is required); and
- a sliding fee with a small number of free cases per year.

These options are described in more detail in the initial consultation impact assessment that accompanies this consultation. This initial impact assessment is largely qualitative, setting out our early thinking, our assumptions and describing what we see as the likely impact of each option. We are keen to hear views about this initial assessment and to seek evidence to help us model in more detail likely impacts of introducing the case fee structure.

The impact assessment also requires us to evaluate 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.

**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.**

**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.**

**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.**

**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.**

### **How to respond**

If you would like to send through your views on our draft case fee rules, our contact details are below. If possible, please send your responses electronically (in Microsoft word format) but hard copy responses by post or fax are also welcome.

Our formal consultation on the case fee rules will close on 4 December 2009.

Email: [alison.robinson@officeforlegalcomplaints.org.uk](mailto:alison.robinson@officeforlegalcomplaints.org.uk)

As we indicated above, we are also keen to discuss the issues we have raised in this paper in other ways. We would welcome opportunities to meet people and organisations who are interested in the scheme rules at workshop events which we propose to hold during the consultation cycle or separately.

### **Consultation timeline**

We want to work be open, accessible and clear in how we develop and discuss our approach. As with the scheme rules consultation, the timetable at the end of the consultation period is very tight. We had to balance wanting to make sure we took as long a time as possible for the formal consultation stage with making sure we met our key milestones. Please do not mistake the slightly shortened consultation period as a sign of us not wanting to listen or take on board views. It is simply a function of needing to meet the tight deadlines for submission to the Lord Chancellor at the end of the year.

We will publish all responses received during the formal consultation period. When you send us your submission, unless you tell us you do not want your views published, we will assume you are happy for us to do so. Generally, we would like to share stakeholder views as we believe in being transparent and open. We will discuss any concerns you have with you about publishing your response and are happy to be flexible in individual cases. If you would prefer not to have your response published we may note that you did not consent for publication in our summary of consultation.

We intend to work to the following timetable:

**Timeline**

**Engagement**

**October to December 2009**

Launch formal consultation of structure and indicative amounts of the levy. Consultation workshops in October/ November to refine our approach to the case fees. Consultation responses published as received.

**4 December 2009**

End of formal consultation period – deadline for detailed written submissions from stakeholders.

**Mid December**

Publication of consultation response summary and OLC response.

**Late December 2009**

Structure and level of case fee considered by OLC Board.

**January 2010**

OLC to request Ministry of Justice to seek Lord Chancellor approval for the proposed approach to the case fee.

<b>Summary: Intervention &amp; Options</b>	
<b>Department / Agency:</b> Office for Legal Complaints	<b>Title:</b> Initial consultation impact assessment – case fees
<b>Stage:</b> Initial consultation/ decision	<b>Version:</b> 1.3 <span style="float: right;"><b>Date:</b> 2 October 2009</span>
<b>Related Publications:</b> Draft OLC scheme rules and consultation paper	

Available to view or download at:  
<http://www.officeforlegalcomplaints.org.uk>

Contact for enquiries: Alison Robinson

**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). Public consultation on case fees will start in early October 2009 (and scheme rules that will govern the Ombudsman service have been published in September for public consultation).

This IA focuses on the structure of the case fee and indicative fee levels.

**What are the policy objectives and the intended effects of the OLC Case Fee Policy?**

- Comply with the requirements of the Act, recover a proportion of the OLC cost (we have assumed 10% as a starting point, to be reviewed after a period of operation), 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, and
  - encouraging, where complaints are brought to the OLC, 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 (£200-400) charged for each referral.

**Option 2:** Sliding fee (£200/300/400) charged for each referral, with the fee higher the later in the process a dispute is resolved. For each option, not charging a fee for the first few (two) cases a firm incurs in any financial year is considered.

**OLC preference is Option 1 with a number of free cases.** The simplicity and clarity of a flat fee structure, minimising distracting disputes about fees (and thus administrative/operational costs) are preferred over the potential benefit of a sliding fee structure to drive early resolution of a case. It is felt that having to pay some form of fee in itself will drive good complaint resolution behaviour. This is balanced against keeping the proportion of the costs derived from the fee at relatively low levels (compared to fees charged by other ombudsman schemes) will ensure impact on small firms is minimised.

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

The fee structure and the level of the fee will be reviewed within three (3) years of the ombudsman scheme commencing operation.

**OLC sign-off For Impact Assessments:**

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

**Signed by:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Summary: analysis & evidence

**Policy Option:  
Option 0  
(hypothetical)**

**Description:** No case fees charged at all. OLC running cost will be recovered through a levy on the legal 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>		<b>Description and scale of key monetised costs by 'main affected groups':</b>  No administrative or other costs if case fee is not charged. The Act precludes this as any other than a hypothetical option.	
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	£ n/a			
	<b>Average Annual Cost</b> (excluding one-off)			
	£ n/a		<b>Total Cost (PV)</b>	£ –
Other <b>key non-monetised costs</b> by 'main affected groups': Extra costs to every member of the legal 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 OLC, 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>		<b>Description and scale of key monetised benefits by 'main affected groups':</b>  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 firms, sole practitioners and firms operating in areas of law which may generate more complaints than others (e.g. immigration, mental health, family, etc) will not be deterred from accepting 'contentious' cases for fear of being charged a large number of complaint case fees.				

**Key assumptions/sensitivities/risks:**

The recovery of OLC cost through 'levy-only' could, depending on how the levy is structured, with 140,000 lawyers, mean an estimated levy of roughly £130-150 per authorised person (lawyer) as the OLC estimated running costs budget is £19.9M.

<b>Price Base Year</b>	<b>Time Period Years</b> 1	<b>Net Benefit Range (NPV)</b> £ 0	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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[Guidance on the following sections can be found by following this link on the BIS website](#)

<b>What is the geographic coverage of the policy/option?</b>	England and Wales			
<b>On what date will the policy be implemented?</b>	From date of opening			
<b>Which organisation(s) will enforce the policy?</b>	OLC			
<b>What is the total annual cost of enforcement for these organisations?</b>	£ unknown			
<b>Does enforcement comply with Hampton principles?</b>	Yes			
<b>Will implementation go beyond minimum EU requirements?</b>	n/a			
<b>What is the value of the proposed offsetting measure per year?</b>	£ n/a			
<b>What is the value of changes in greenhouse gas emissions?</b>	£ n/a			
<b>Will the proposal have a significant impact on competition?</b>	n/a			
<b>Annual cost (£-£) per organisation (excluding one-off)</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
<b>Are any of these organisations exempt?</b>	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline (2005 Prices)</b>	(Increase - Decrease)			
<b>Increase of</b> £ n/a	<b>Decrease of</b> n/a	<b>Net Impact</b>	£ n/a	

Key

**Annual costs and benefits: Constant Prices**

**(Net) Present Value**

## Summary: analysis & evidence

**Policy Option:  
Option 1a**

**Description:** Flat fee (£200-400) for each case with no free cases per year. The OLC budget 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.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		<b>Description and scale of key monetised costs by 'main affected groups':</b>  The costs will be the administrative costs of implementing the fee scheme for both the OLC and authorised persons (lawyers). There may also be costs of enforcement if compliance is less than 100%.	
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	£ n/a			
	<b>Average Annual Cost</b> (excluding one-off)			
	£ n/a		<b>Total Cost (PV)</b>	£ –
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 being charged for a high number of complaints. This might put some small businesses' survival at risk, or could affect access to justice. Keeping the fee low should mitigate this effect.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<b>Description and scale of key monetised benefits by 'main affected groups':</b>  N/a	
	<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': Compared to Option 0, 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 disproportionate impact on small firms, sole practitioners and firms operating in contentious areas of law.				

**Key assumptions/sensitivities/risks:**

This option assumes for the purposes of this consultation that the levy covers 90% of costs (approximately £120-30 per authorised person).

<b>Price Base Year</b>	<b>Time Period Years</b> 1	<b>Net Benefit Range (NPV)</b> £ 0	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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[Guidance on the following sections can be found by following this link on the BIS website](#)

<b>What is the geographic coverage of the policy/option?</b>	<b>England and Wales</b>			
<b>On what date will the policy be implemented?</b>	<b>From date of opening</b>			
<b>Which organisation(s) will enforce the policy?</b>	<b>OLC</b>			
<b>What is the total annual cost of enforcement for these organisations?</b>	<b>£ not known</b>			
<b>Does enforcement comply with Hampton principles?</b>	<b>Yes</b>			
<b>Will implementation go beyond minimum EU requirements?</b>				
<b>What is the value of the proposed offsetting measure per year?</b>	<b>£</b>			
<b>What is the value of changes in greenhouse gas emissions?</b>	<b>£ n/a</b>			
<b>Will the proposal have a significant impact on competition?</b>	<b>Not anticipated</b>			
<b>Annual cost (£-£) per organisation (excluding one-off)</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
<b>Are any of these organisations exempt?</b>	<b>No</b>	<b>No</b>	<b>N/a</b>	<b>N/a</b>

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

Key

**Annual costs and benefits: Constant Prices**

**(Net) Present Value**

## Summary: analysis & evidence

### Policy Option: Option 1b

**Description:** Flat fee (£200-400) for each case with two free cases per year. The OLC budget 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	ANNUAL COSTS		<b>Description and scale of key monetised costs by 'main affected groups':</b> The costs will be the administrative costs of implementing the fee scheme for both the OLC and law firms. There may also be costs of enforcement if compliance is less than 100%.  The administrative burden is likely to be less under this model. Having two free cases will mean a significant proportion of lawyers (authorised persons) will not be required to pay or administer the case fee.
	One-off (Transition)	Yrs	
	£ n/a		
	Average Annual Cost (excluding one-off)		
£ n/a		<b>Total Cost (PV)</b>	£ –
Other <b>key non-monetised costs</b> by 'main affected groups': As for Option 1a. Possible additional administrative costs for the OLC through complexity of counting free cases per firm or office, and keeping track of them.			
BENEFITS	ANNUAL BENEFITS		<b>Description and scale of key monetised benefits by 'main affected groups':</b>  N/a
	One-off	Yrs	
	£ n/a		
	Average Annual Benefit (excluding one-off)		
£ 0		<b>Total Benefit (PV)</b>	£ 0
Other <b>key non-monetised benefits</b> by 'main affected groups': As for Option 1a. Two free cases per firm per year might further alleviate any pressure on small firms and sole practitioners as well as acknowledging that all firms might receive occasional complaints and should not be penalised for that.			

**Key assumptions/sensitivities/risks:**

As for Option 1a. This also assumes that the level of the case fee remains the same with two free cases as it would in Option 1a with no free cases. This may increase the proportion collected via the levy.

<b>Price Base Year</b>	<b>Time Period Years</b> 1	<b>Net Benefit Range (NPV)</b> £ 0	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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[Guidance on the following sections can be found by following this link on the BIS website](#)

<b>What is the geographic coverage of the policy/option?</b>	<b>England and Wales</b>			
<b>On what date will the policy be implemented?</b>	<b>From date of opening</b>			
<b>Which organisation(s) will enforce the policy?</b>	<b>OLC</b>			
<b>What is the total annual cost of enforcement for these organisations?</b>	<b>£ not known</b>			
<b>Does enforcement comply with Hampton principles?</b>	<b>Yes</b>			
<b>Will implementation go beyond minimum EU requirements?</b>				
<b>What is the value of the proposed offsetting measure per year?</b>	<b>£</b>			
<b>What is the value of changes in greenhouse gas emissions?</b>	<b>£ n/a</b>			
<b>Will the proposal have a significant impact on competition?</b>	<b>Not anticipated</b>			
<b>Annual cost (£-£) per organisation (excluding one-off)</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
<b>Are any of these organisations exempt?</b>	<b>No</b>	<b>No</b>	<b>N/a</b>	<b>N/a</b>

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

Key

**Annual costs and benefits: Constant Prices**

**(Net) Present Value**

## Summary: analysis & evidence

### Policy Option: Option 2a

**Description:** A sliding fee charged to firms, set relatively low for early resolution of the complaint, and rising if the dispute moves to later stages of the process. This model considers a fee structure of £200 / £300 / £400 per complaint, depending on resolution stage. All complaints are chargeable subject to the waiver provisions in the Act.

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups':
One-off (Transition)	Yrs	
£ n/a		
Average Annual Cost (excluding one-off)		
£ n/a		<p>The costs will be the administrative costs of implementing the fee scheme for both the OLC and authorised persons (lawyers). There may also be costs of enforcement if compliance is less than 100%.</p> <p>The administrative burden is likely to be highest under this model both for the OLC and lawyers (authorised persons).</p>
<b>Total Cost (PV)</b>		<b>£ –</b>
<p>Other <b>key non-monetised benefits</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 larger impact on access to justice than Option 1a or 1b. Additional administrative cost to OLC and firms is to be expected, given the higher complexity of the fee structure, and possible challenges and disputes about amount and chargeability of fees.</p>		
ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups':
One-off	Yrs	
£ n/a		
Average Annual Benefit (excluding one-off)		
£ 0		<p>N/a</p>
<b>Total Benefit (PV)</b>		<b>£ 0</b>
<p>Other <b>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. Paying a fee should generally drive good complaints resolution behaviour and legal service quality, but this structure would particularly drive early complaint resolution behaviour, minimising OLC operative costs. The ability to waive the case fee as set out in the Act 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:**

As for Option 1a. This option assumes the same amount collected via the levy as Option 1a and overall has the same average case fee level.

<b>Price Base Year</b>	<b>Time Period Years</b> 1	<b>Net Benefit Range (NPV)</b> £ 0	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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[Guidance on the following sections can be found by following this link on the BIS website](#)

<b>What is the geographic coverage of the policy/option?</b>	<b>England and Wales</b>			
<b>On what date will the policy be implemented?</b>	<b>From date of opening</b>			
<b>Which organisation(s) will enforce the policy?</b>	<b>OLC</b>			
<b>What is the total annual cost of enforcement for these organisations?</b>	<b>£ not known</b>			
<b>Does enforcement comply with Hampton principles?</b>	<b>Yes</b>			
<b>Will implementation go beyond minimum EU requirements?</b>				
<b>What is the value of the proposed offsetting measure per year?</b>	<b>£</b>			
<b>What is the value of changes in greenhouse gas emissions?</b>	<b>£</b>			
<b>Will the proposal have a significant impact on competition?</b>	<b>Not anticipated</b>			
<b>Annual cost (£-£) per organisation (excluding one-off)</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
<b>Are any of these organisations exempt?</b>	<b>No</b>	<b>No</b>	<b>N/a</b>	<b>N/a</b>

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

Key

**Annual costs and benefits: Constant Prices**

**(Net) Present Value**

## Summary: analysis & evidence

### Policy Option: Option 2b

**Description:** A sliding fee charged to firms, set relatively low for early resolution of the complaint, and rising if the dispute moves to later stages of the process subject to the waiver provisions in the Act. The fee structure for this model is £200/ £300/ £400 per complaint, depending on resolution stage. The first two complaints in any financial year are free.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		<b>Description and scale of key monetised costs by 'main affected groups':</b> The costs will be the administrative costs of implementing the fee scheme for both the OLC and authorised persons (lawyers). There may also be costs of enforcement if compliance is less than 100%. The administrative burden is likely to be highest under this model. Having two free cases will mean a significant proportion of firms will not be required to pay or administer the case fee however in general the administrative costs of the sliding scale will be higher (as in Option 2a).	
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	£ n/a			
	<b>Average Annual Cost</b> (excluding one-off)			
	£ n/a		<b>Total Cost (PV)</b>	£ -
Other <b>key non-monetised benefits</b> by 'main affected groups': As for Option 2a. Disproportionate impact on smaller firms and firms operating in contentious areas of the law are somewhat mitigated by allowing for two free complaints per firm per year.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<b>Description and scale of key monetised benefits by 'main affected groups':</b>  N/a	
	<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': As for Option 2a. Allowing for two free cases might help mitigate some of the impact on small firms, sole practitioners and firms operating in contentious areas of law.				

**Key assumptions/sensitivities/risks:**

As for Option 1a. This also assumes that the average level of the case fee remains the same with two free cases as it would in Option 2a with no free cases. This may increase the proportion collected via the levy.

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £ 0	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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[Guidance on the following sections can be found by following this link on the BIS website](#)

<b>What is the geographic coverage of the policy/option?</b>	<b>England and Wales</b>			
<b>On what date will the policy be implemented?</b>	<b>From date of opening</b>			
<b>Which organisation(s) will enforce the policy?</b>	<b>OLC</b>			
<b>What is the total annual cost of enforcement for these organisations?</b>	<b>£ not known</b>			
<b>Does enforcement comply with Hampton principles?</b>	<b>Yes</b>			
<b>Will implementation go beyond minimum EU requirements?</b>				
<b>What is the value of the proposed offsetting measure per year?</b>	<b>£</b>			
<b>What is the value of changes in greenhouse gas emissions?</b>	<b>£ n/a</b>			
<b>Will the proposal have a significant impact on competition?</b>	<b>Not anticipated</b>			
<b>Annual cost (£-£) per organisation (excluding one-off)</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
<b>Are any of these organisations exempt?</b>	<b>No</b>	<b>No</b>	<b>N/a</b>	<b>N/a</b>

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

Key

**Annual costs and benefits: Constant Prices**

**(Net) Present Value**

## Evidence Base

### Initial impact assessment

#### 1. Introduction and background

- 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.
- Complaints may be filed to the OLC in relation to poor service (e.g. untimely responses, unclear fees), but not in relation to (professional) conduct. (The latter 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 its own costs. Costs will be recovered via a levy on the legal profession (which is not covered by this IA), 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 OLC, following an unsuccessful attempt to resolve their dispute in-house. They may be charged up front, with a possibility to reimburse lawyers or may be charged at the end of the process. The Act allows for the case fee to be waived (or reimbursed) in certain specific circumstances.
- After intensive initial design and scoping the OLC is now in a phase of public consultation about the draft scheme rules. Amongst these are the proposed rules relating to case fees.
- A quantitative impact assessment evaluating different options on precise case fees is planned for later this year. The evidence and views we have here at this initial stage will inform this more detailed analysis.

#### 2. 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 OLC costs**, in compliance with the requirements of the Act, while contributing to improving the quality of service provided by authorised persons (called lawyers or firms in this paper for ease of reading).
- **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).

- **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 OLC, early and informal resolution wherever possible.

- **Minimise unnecessary operational and administrative complexity and costs.**

### **General scope**

- This initial consultation impact assessment (IA) 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 OLC 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 the levy and case fee cost recovery. However, it has been suggested to start the initial phase of OLC operation with low case fees, recovering only a small amount of the OLC cost, with the majority of the cost being recovered via levy. (An initial suggestion entails accounting for recovery of approximately 10% of cost via fees and 90% via levy.) Such an approach would give the OLC time to establish its operation and understand the real (as opposed to the currently only estimated) quantities of its business. A review after an initial phase of operation (less than three years) would then allow us to adjust the case fee structure accordingly.
- For the purpose of this initial consultation IA the amounts proposed for OLC case fees has been estimated using the following factors:
  - expected number of complaints (cases) per year: approximately 14,000
  - % of case fees reimbursed or not charged where firms met the waiver criteria in the Act: 10%
  - options for number of complaints allowed per year and firm for free: 0, or 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 initial consultation IA are the following:

- **Option 0:** Base Case. No fees charged for OLC service. This option is hypothetical, as the OLC is required by the Legal Services Act 2007 to charge case fees.
- **Option 1:** Flat fee of £200 - 400 charged for each complaint filed with the OLC.
  - Option 1a evaluates not allowing for any free cases at all.
  - Option 1b evaluates allowing two free cases per firm per financial year.

- **Option 2:** Sliding fee of £200 / £300 / £400 for each complaint filed with the OLC, with the fee starting low in case of early resolution of the complaint, and rising if the complaint continues to the late stages of the OLC dispute resolution process.  
Option 2a evaluates not allowing for any free cases at all.  
Option 2b evaluates allowing two free cases per firm per financial year.

**This initial consultation IA evaluates advantages and disadvantages, costs and benefits of a flat fee compared to a sliding fee. It also assesses the pros and cons and the impact of allowing a small number of 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 OLC.
- 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 law costs draftsmen.
- The OLC is, of course, the other main organisation that this proposal impacts on.
- The Ministry of Justice and Legal Services Board are involved as the OLC has direct relationships with both these organisations.

### **3. Policy rationale for proposal**

- This initial consultation IA qualitatively evaluates the OLC case fee options of flat compared to sliding fees, with or without a yearly allowance of free cases. It is intended to go out to build on the OLC public consultation on its draft scheme rules, in order to help gather quantitative information to refine the economic impact modelling of each of the options.
- A more detailed, quantitative IA will be prepared using the data gathered during the public consultation, with a more in-depth evaluation of case fee options and a recommendation as to the option preferred.

### **4. Cost benefit analysis**

- This section sets out the potential advantages, disadvantages and costs of Options 0, 1 and 2.

### **Case fees or not? – Comparison Options 1 and 2 with base case**

- The OLC 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 OLC 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 OLC 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 OLC, thus minimising OLC 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 options presented here, therefore, propose case fees ranging from £200-£400 – an amount sufficiently high to be motivating quality in-house complaint resolution, but reasonable compared to case fees of around £1,000 currently charged in other schemes, and thus relieving some of the disproportionate impact of case fees on small firms. The fact that firms found who do not meet the criteria to have a chargeable case (set out in the Act) after investigation will not be charged or will have their case fees reimbursed 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 OLC. Each of the options will involve an administrative cost. However, the cost is likely to be lowest for Option 1b, and highest in Option 2a. The sliding scale would inevitably mean 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 sliding fee – comparison of option 1 and option 2**

- Both flat and sliding fees 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 the case fee under the criteria set out in the Act is likely to 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.
- A flat fee approach does not consider the impact of timing of resolution, nor, (as the sliding fee approach does), reward those who strive for an early, informal complaint resolution in the OLC process, and who contribute to saving some of the OLC operative cost. However, 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 any emotional charge of each case which might lead it to go on to a later stage in the OLC process no matter how constructively the lawyers have behaved. This could mean 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 sliding fees might put unwanted pressure on small firms, sole practitioners and law firms operating in more contentious areas of the law, thus impacting access to justice. See considerations above (under *Case Fees or not?*) for detailed discussion of this issue. A sliding fee approach could help lift some of this pressure by giving investigated lawyers a theoretical option to lower the case fee they incur by striving for early complaint resolution. However, such an early complaint resolution might not necessarily be in their control (see bullet point above).
- The sliding fee approach has the distinct disadvantage of introducing complexity and scope for contention into the OLC process. Keeping track of resolution stages, and deciding on case fee amounts (particularly for cases which are resolved at a 'borderline', i.e. between two stages in the process) could prove administratively onerous and potentially contentious, generating distracting disputes about the amount of the case fee charged, increasing the OLC operative and administrative cost.
- For all these considerations, this initial, qualitative assessment tends towards adopting a flat case fee structure for the OLC.

### **Free cases or not? – comparison of variation a. and variation b. in Options 1 and 2**

- Allowing for a small number (two) of free cases per firm per year has the advantage of acknowledging that firms with good in-house complaints handling procedures might end up with an occasional complaint reaching the OLC. It sends the signal of OLC 'good will', in that such lawyers or firms are not penalised for occasional complaints.
- However, allowing free cases introduces complexity of administration into the OLC process, and will certainly diminish the total amount of OLC cost recovered through case fees. Equivalently, the proportion of total costs recovered through the levy will rise.
- The current, qualitative considerations would see the OLC tend towards favouring the possibility of allowing two free cases per year, placing more importance on giving a sign of good will 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 initial consultation 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 in this initial consultation impact assessment, 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.

**Base case / option 0 (“do nothing”): charge no case fees at all.**

- 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 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 OLC did not charge any case fees, the implication would be that its entire cost would be recovered via levy on the legal profession.
- 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.
- However, spreading the burden of the OLC cost evenly (through levy) across all members of the legal profession would not take into account any weighting of the cost towards firms who generate the complaints. Whilst it is not within the intention of the OLC 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 OLC, as lawyers might choose more readily to escalate complaints to the OLC, rather than deal with them satisfactorily in-house first.

**Option 1b: two complaints per year per firm are free**

**Description**

- Flat fee (£200-400) for each case with no free cases 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. Two variations of this option are evaluated:

- Option 1a: All complaints are chargeable.
- Option 1b: 2 complaints per financial year and lawyer/law firm are free.

**Costs**

- Cost to lawyers: £200 - £400 case fee per complaint, plus annual levy (not in scope for this impact assessment).
- Cost to OLC: 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 admin/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), provision for the charge to be waived or reimbursed if firms meet the criteria set out in the Act and (Option 1b) two free complaints per financial year mitigate any unwanted pressure on small firms, sole practitioners and firms operating in more contested areas of law, affecting access to justice.

### **Option 2a: all**

#### **Description**

- A lawyer will pay the annual levy (see Option 0), plus a sliding fee, set relatively low for early resolution of the complaint, and rising if the dispute moves to later stages of the process. This model considers a fee structure of £200 / £300 / £400 per complaint, depending on resolution stage. All complaints are chargeable subject to the waiver provisions in the Act. Two variations of this option are evaluated:
  - Option 2a: all complaints are chargeable.
  - Option 2b: two complaints per year per firm are free.

#### **Costs**

- Cost to OLC: cost of enforcing case fee payment. 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. Possibly higher than in Option 1.

#### **Benefits**

- Driving positive behaviour in lawyers towards satisfactory in-house complaint resolution and early stage OLC process resolution.
- Increased weighting towards those generating lengthy complaints.
- Low fee (compared to other fees of £1000), provision for the charge to be waived or reimbursed in specified circumstances and (Option 1b) two free complaints per year mitigate pressure on small firms, sole practitioners, etc.

### **Summary of options**

- A flat fee structure presents the advantage of simplicity and low administrative costs, whereas a sliding fee structure might drive behaviour more towards early stage resolution of complaints in the OLC process (though this might not be necessarily so).
- Both flat and sliding fee structure might drive behaviour towards good quality complaints resolution processes and resolving complaints in house before they get escalated to the OLC.
- Both might have an unwanted, disproportionate effect on small businesses, sole practitioners and law firms operating in more contested fields of the law. Low case fee amounts, reimbursements and two free cases per firm 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 legal profession more than a flat fee structure.
- Following this initial consultation qualitative IA, the OLC tends towards favouring a flat fee over a sliding fee structure, due to the simplicity and potential to minimise fee disputes and administrative costs of the former.
- Allowing for two free cases a year per firm is preferred over charging for all cases, as it further mitigates unwanted pressure on members of the legal 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.

### **5. Enforcement and implementation**

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

### **6. Specific impact tests**

#### **Rural proofing**

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

#### **Environmental tests**

There is not likely to be a significant, if any, specific environmental impact of this proposal.

#### **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 we are keen to further our understanding of these impacts and to evaluate the available evidence during this consultation stage.

### **Sustainable development**

Of the five principles of sustainable development which Government has committed to, this proposal may 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. Part of the aim of this consultation is to better understand those potential impacts to inform how we structure and set the level of the case fee.

### **Small firms impact test**

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 we are keen to further our understanding of these impacts and to evaluate the available evidence during this consultation stage. We will during our consultation seek the views of sole practitioners, small firms and other parts of the profession who may be more heavily impacted by these proposals.

### **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. As noted above, we are keen to seek evidence during this consultation phase.

### **Human rights**

The case fee structure sits within the scheme rules for the OLC. A draft of the scheme rules is currently published for public consultation. 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. If there is any impact that we have not identified, we would be keen to hear views on this during this consultation stage.

### **EIA**

The case fee structure sits within the scheme rules for the OLC. A draft of the scheme rules is currently 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 ethnic minority lawyers. We will during our consultation seek the views of these parts of the profession who may be more heavily impacted by these proposals.