EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (LEGAL COMPLAINTS) (PARTIES) ORDER 2010

2010 No. 2091

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument prescribes persons other than individuals who may bring a complaint about an authorised person (for the purposes of the Legal Services Act 2007) under the Ombudsman Scheme set up by the Office for Legal Complaints (OLC) when it becomes operational on 6 October 2010.

2.2 Section 128 of the Legal Services Act 2007 Act only provides for individuals to make complaints under the OLC's Ombudsman Scheme. However, the Act makes provision for additional categories of complainant to be added by order of the Lord Chancellor on the recommendation of the OLC, Legal Services Board (LSB) or the Legal Services Consumer Panel.

2.3 The persons added by the instrument are:

(a) an enterprise which, at the material time, is a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC, as that Recommendation had effect at the date it was adopted;

(b) a charity with an annual income net of tax of less than £1 million at the material time;

(c) a club, association or organisation, the affairs of which are managed by its members or a committee or committees of its members, with an annual income net of tax of less than £1 million at the material time;

(d) a trustee of a trust with an asset value of less than £1 million at the material time;

(e) a personal representative of an estate of a person where the circumstances set out in article 3 of the Order are satisfied; and

(f) a beneficiary of an estate of a person where the circumstances in article 3 of the Order are satisfied.

2.4 The circumstances which relate to categories (e) and (f) are where the person who was the client of the legal services provider died before a complaint was made and the personal representative is dealing with his or her estate or the person is a beneficiary of that estate.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This instrument is made under sections 128(3)(b) and (4)(d) and 204(3)(a) of the 2007 Act and on the recommendation of the OLC under section 130(1) of the 2007 Act, which enables an interested body (such as the OLC) to recommend to the Lord Chancellor that he makes an order to extend the list of persons eligible to make a complaint under the Ombudsman Scheme.

4.2 The *Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order* 2008 commenced provisions enabling the establishment of the OLC and the *Legal Services Act 2007 (Commencement No 3 and Transitory Provision) Order 2008* commenced provisions for the establishment of the Ombudsman Scheme which is to be administered in accordance with Part 6 of the 2007 Act and with the OLC's scheme rules. The OLC will become operational on the 6 October 2010, when the relevant provisions are commenced in the Legal Services Act (Commencement No.8, Transitory and Transitional Provisions) Order 2010.

4.3 In relation to this instrument the OLC has made the recommendation to the Lord Chancellor as part of its preparation for becoming fully operational on 6 October 2010. This is when the OLC will become the single independent complaints handling body responsible for dealing with all service complaints made by consumers about authorised persons. Before making the recommendation, the OLC has followed the requirements of 130(3) by publishing a draft of the recommendation and inviting and considering the representations made on the proposed draft.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The 2007 Act reforms the way in which legal services are regulated in England and Wales. It establishes the LSB, which will act as the oversight

regulator of the legal profession in England and Wales. It also establishes the OLC, a new independent complaints-handling body. The 2007 Act also enables the introduction of alternative business structures (ABS), which will allow lawyers and non-lawyers to work together as one body to provide legal and non-legal services.

7.2 As the 2007 Act establishes three distinct components of the regulatory regime, it was considered appropriate to commence each part separately, with the LSB and the main regulatory regime coming into effect first (1 January 2010), followed by the OLC assuming responsibility for dealing with complaints about legal services from the Approved Regulators and finally the introduction of ABS regime, expected to be in late 2011.

7.3 As the single legal complaints handling body, the OLC will deal with all service complaints made by the consumer about authorised persons (for example, solicitors). The Approved Regulators like the Law Society who currently deal with service and conduct complaints will be prohibited under section 157 of the 2007 Act from making provisions for redress for poor service and will only deal with complaints regarding conduct.

7.4 Initial provisions relating to the OLC have already been commenced to allow it to establish a Board, staff, premises, and IT systems in preparation for becoming operational. Under section 115 of the 2007 Act, the OLC is required to establish an Ombudsman Scheme in accordance with the provisions in Part 6 of the 2007 Act and its Scheme Rules. The Scheme Rules provide a framework for how the Ombudsman Scheme will resolve disputes including setting out who can complain, what sort of complaints can and cannot be investigated and the procedures of how the Ombudsman Scheme will operate in practice. Although under the 2007 Act only individuals would have been eligible to use the Ombudsman Scheme, it was recognised that there should be flexibility to allow other parties to use the Ombudsman Scheme if a case was made to do so. This was the reason for including the order making powers at section 128 (3)(b) of the Act. The OLC considered that it was appropriate to recommend that additional parties should be able to use the Ombudsman Scheme as soon as it becomes fully operational.

7.5 The OLC consulted on its scheme rules in September 2009. Following that consultation the OLC asked the Lord Chancellor to extend the Ombudsman's jurisdiction to other types of complainant. As currently drafted section 128 of the 2007 Act only permits individuals to use the Ombudsman Scheme. The OLC considers that part of its role is to provide an alternative means of dispute resolution which is easy to understand, quick, independent and free for consumers of legal services. For this reason, the OLC wants to extend the scope of those who can complain, as this will help those bodies which are not of very substantial means (such as small businesses, sole traders and charities) to seek redress via the Ombudsman Scheme, rather than being unduly disadvantaged if they lack the means to pursue other routes of redress, eg, through formal court proceedings, which can be lengthy and costly.

7.6 Widening the scope of the parties is considered by the OLC to be important with regard to the regulatory objectives of the 2007 Act. The widened scope increases the inclusivity of the complaints process and provides a procedure for the categories of consumer who would otherwise be financially unable to seek redress through the civil court process. These groups of people reflect those eligible to use other Ombudsman schemes, including the Property Ombudsman and Financial Services Ombudsman. The OLC aims to include these additional parties in a section 128 order to be consistent with good ombudsman practice.

7.7 The OLC also recommended that personal representatives and beneficiaries of estates be included in the Ombudsman's jurisdiction. This means that if a person dies before referring the complaint to the Ombudsman Scheme another person may bring the complaint before the OLC for resolution. This is considered important in the interests of seeking justice for the deceased or where the subject of the complaint is related to the estate that remains.

7.8 The complaining party must fall within the annual income or asset restrictions detailed at 2.2 above at the time at which the complaint is made to the legal services provider, and the Order allows the OLC to use whatever methods it considers fit to decide whether a party meets the relevant financial qualifications.

7.9 The inclusion of "clubs" is intended to encompass both "incorporated clubs", which have their own legal identity, separate from that of the members, and "unincorporated clubs" which have a contractual rather than a statutory basis. Both types of club are intended to benefit from the Ombudsman scheme.

7.10 The Lord Chancellor has considered the recommendations made by the OLC and the reasons for extending the Ombudsman's jurisdiction to the parties set out at paragraph 2.2 above. He accepts the reasons given for the parties to be added and has agreed to make this instrument.

7.11 The OLC recognises that once operational it may need to update its scheme rules to reflect changes in the legal landscape and this may result in a further recommendation to allow additional parties to use the Ombudsman Scheme.

- ***Consolidation***

7.12 This instrument makes provision as permission under the 2007 Act. There are no issues relating to consolidation.

8. Consultation outcome

8.1 Section 130(3) sets out that before an interested body, in this case the OLC, makes a recommendation to the Lord Chancellor it must publish a draft of the proposed recommendation, invite representations regarding the proposed recommendation and consider any representations that are made. The OLC discharged this duty by conducting a public consultation on the Scheme Rules,

which included the proposal that the scheme rules be extended to the parties set out at paragraph 2.2 above.

8.2 The OLC published its initial consultation document in September 2009. The consultation received 20 responses from a range of bodies including regulators such as the Law Society, the Solicitors Regulation Authority and the Bar Standards Board and consumers bodies including "Which?" and the National Consumer Federation. There was overall agreement from those consulted that the Ombudsman scheme should be extended to include the parties suggested by the OLC. No additional parties were added as the result of the consultation.

8.3 The consultation closed on 8 December 2009 and the consultation response, which came from a wide range of bodies and was overwhelmingly positive, was published in April 2010. A copy of the consultation and the response documents can be found at:-http://www.legalombudsman.org.uk/talk-to-us/.

9. Guidance

9.1 The OLC will publicise the new regime and will ensure that all changes are brought to the attention of the profession. This publicity will include working with partners such as the Law Society to raise awareness of the scheme within the profession. This will involve the OLC undertaking a programme of speaking events, attending key conferences as exhibitors, and promoting the scheme in the trade press. The "signposting" requirement, which requires all lawyers to give their clients information about how to complain to the Ombudsman scheme is at the core of this strategy.

9.2 The LSB, as oversight regulator of the approved regulators, has in place mechanisms to guide approved regulators through the new regime. In turn, the approved regulators are responsible for issuing guidance to their members.

10. Impact

10.1 An initial Impact Assessment was carried out by the OLC at the time of the public consultation on the Scheme Rules. This formed part of the OLC Scheme Rules Covering Paper which is available at http://www.legalombudsman.org.uk/talk-to-us/. An additional Impact Assessment has also been completed by the Ministry of Justice which show the costs and benefits of the proposed extension of the Ombudsman Scheme to the parties listed in paragraph 2.2 above and is attached at Annex A.

11. Regulating small business

11.1 This legislation does apply to small businesses. It does not add an additional burden. By allowing these parties to use the Ombudsman Scheme, they will have access to an alternative means of dispute resolution which is easy to understand, quick, independent and free of charge rather than having to access redress through the courts.

12 Monitoring & review

12.1 The OLC recognises that the Scheme Rules and the proposals it has made regarding the parties to be covered by the rules are only a starting point. As the Ombudsman Scheme becomes operational and a clearer picture of the volumes of complaints becomes available, it is possible that changes in practice may be required and that additional parties may need to be added to ensure that the Ombudsman scheme is able to respond to the changing and developing legal service landscape.

12.2 More widely, the OLC will be subject to annual Parliamentary scrutiny as section 118 of the 2007 Act requires the OLC to prepare an annual report which must be laid before Parliament by the Lord Chancellor under section 118(6). In addition, section 120 of the 2007 Act permits the LSB to require the OLC to prepare a report on any specified matter relating to its functions and section 121 enables the Board to set performance targets relating to the OLC's functions.

12.3 The OLC also has powers to monitor authorised persons and section 146 of the 2007 Act enables it to report authorised persons who are failing to cooperate with its investigations to the relevant approved regulator. It may also report failure to produce information or documents to approved regulators under section 148 of the 2007 Act.

13. Contact

Please contact Rachel George at the Ministry of Justice
(Tel: 020 3334 2638 or Email: Rachel.George@justice.gsi.gov.uk) regarding any queries about this instrument.

Title:	Impact Assessment (IA)
The Legal Services Act 2007 (Legal Complaints) (Parties) Order 2010 **Lead department or agency:** The Ministry of Justice **Other departments or agencies:**	**IA No:** MOJ005 **Date: 28/07/2010** **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Rachel George rachel.george@justice.gsi.gov.uk

Summary: Intervention and Options

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

1.) Section 128 of the 2007 Legal Services Act defines the categories of complaint which fall within the remit of the Office for Legal Complaints (OLC) Ombudsman Scheme. This section allows the Ombudsman to deal with complaints from consumers about the service received from an Authorised Person[1].

2.) As currently drafted, section 128 only provides for individuals to make complaints, which means that all other types of complainant are excluded. However, there is provision for additional categories of complainant to be added by Order of the Lord Chancellor under section 130 of the 2007 Act.

3.) The OLC has recommended to the Lord Chancellor that he make an Order to extend the class of parties which are eligible to use the Legal Ombudsman Scheme established by the Office for Legal Complaints under the Legal Services Act 2007 ("the 2007 Act"). Currently, only individuals may use this Scheme, but it is intended to expand the class of potential complainants to bring it into line with other Ombudsman schemes.

What are the policy objectives and the intended effects?

The inclusion of additional parties has regard to the regulatory objective of the 2007 Act by increasing the inclusivity of the complaints process. There was concern that if not included, these categories of consumer would be financially unable to seek redress through more traditional routes, such as taking legal action and court proceedings These groups of people are already eligible to use other Ombudsman schemes and it is felt that including these additional parties in a section 128 order will add consistency and enhance good practice.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: do nothing – continue to deny certain groups the chance to bring complaints to the Office of Legal complaints as a means of dispute resolution

Option 1: Extend the number of groups that are eligible to bring complaints to the Office of Legal complaints as a means of dispute resolution

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 10/2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Lord McNally ..... Date: 17th August 2010.....

[1] See Annex 2 for definition of authorised person.

Summary: Analysis and Evidence

Policy Option 1

Description: Extend the number of groups that are eligible to bring complaints to the OLC scheme

Price Base Year 2010	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/Q		N/Q	N/Q

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

Costs to HMCS through a reduction in fees paid as the number of claims made under the Court system falls. Costs to solicitors through an increase in the levy costs payable by solicitors, used to fund the OLC. If the volume of complaints increases, this may lead to an increased levy and increased Practising Certificate fees. Higher volumes of complaints to OLC will increase costs to solicitors as more will be expected to obtain a 'third strike'[2]. Furthermore, solicitors who represent complainants can be expected to suffer a reduction in business as complaints are settled through the Ombudsman scheme rather than through the courts system.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/A		£2.1 million	N/A

Description and scale of key monetised benefits by 'main affected groups'

Benefits to HMCS of a reduced burden on the courts, equivalent to 1,300 cases a year. If all claims progress to a full trial day, costing an estimated £1,632, HMCS will realise savings in the region of £2.1 million a year. This will be offset by the reduction in fees.

Other key non-monetised benefits by 'main affected groups'

Benefits to claimants from not having to pay court fees or legal expenses for bringing complaints to the Ombudsman scheme. The Ombudsman process is also less complicated and time-consuming than hearing complaints through the courts. Benefits to HMCS of a reduced number of complaints in the court system - this will increase the overall capacity to process other caseloads and enable speedier resolution of those cases. HMCS may benefit from reduced expenditure on fee subsidisation, depending on whether fees are currently subsidised. .

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Estimation of monetised benefits is based on the assumption that every case reaches trial stage and that the trial involved a full day of court time before a circuit judge in a county court. Realised benefits to HMCS could vary depending on the validity of these assumptions. Though the increase in levy cost payable by solicitors has not been monetised, this depends on the number of additional cases going through the OLC, which could fluctuate annually.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: N/Q	AB savings n/q	Net: n/q	Policy cost savings: n/q	No

[2] The basis of the three strike scheme is that solicitors will not be charged for administrative fees and investigating the first two cases against them; once a third service complaint has been proved, they will pay a penalty fee for every further case.

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			06/10/2010		
Which organisation(s) will enforce the policy?			The Office for Legal Complaints		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** 0	**Non-traded:** **0**	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 0	**Benefits:** 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** N/Q	**< 20** N/Q	**Small** N/Q	**Medium** N/Q	**Large** N/Q
Are any of these organisations exempt?	No	No	No	Yes	Yes

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[3] Statutory Equality Duties Impact Test guidance	No	p.8
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	p.8
Small firms Small Firms Impact Test guidance	Yes	p.8
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	p.8
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	p.8
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	p.8
Human rights Human Rights Impact Test guidance	No	p.8
Justice system Justice Impact Test guidance	Yes	p.8
Rural proofing Rural Proofing Impact Test guidance	No	p.9
Sustainable development Sustainable Development Impact Test guidance	No	p.9

[3] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	The Legal Services Act 2007
2	OLC Scheme Rules Consultation, which can be found at http://www.legalombudsman.org.uk/talk-to-us/
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheet)

1. Introduction

1. 1 The Legal Services Act 2007 ("the 2007 Act") reforms the manner in which legal services are regulated in England and Wales. In particular, the 2007 Act establishes the Office for Legal Complaints ("the OLC") which, as the single legal complaints handling body, will deal with all service complaints made by the consumer about authorised persons (for example, solicitors). The Approved Regulators, for example the Law Society, who currently deal with all complaints against the providers of legal services, will in future deal solely with complaints relating to conduct, and will be prohibited under s157 of the 2007 Act from providing redress for service complaints.

1. 2 The OLC is required by section 115 of the 2007 Act to establish an Ombudsman Scheme to deal with the above mentioned complaints. The details of this Ombudsman service are set out on the OLC Scheme Rules which dictate who can complain, what sort of complaints can and cannot be investigated and the procedures of how the Ombudsman Scheme will operate in practice. As currently drafted, s128 of the 2007 Act only entitles individual complainants to raise their issues with the Ombudsman.

1. 3 The OLC consulted on their Scheme Rules in September 2009. Following this consultation, the OLC asked the Lord Chancellor to extend the Ombudsman's jurisdiction to other types of complainant, which are listed at 1.9. This is possible under a provision in section 128 of the 2007 Act to allow for additional categories of complainant to be added at any time by order of the Lord Chancellor on the recommendation of the OLC, Legal Services Board (LSB) or the Legal Services Consumer Panel.

Economic Rationale

1. 4 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

1. 5 In this context, the rationale for enabling new organisations and sectors to file service complaints to the OLC is based on equity and efficiency considerations. This policy change adds an element of consistency and thereby fairness, by the inclusion of more people able to seek similar methods of redress. It will also speed up complaints processes for businesses, charities and trusts and reduce costly delays for all service users in the courts system.

Affected Stakeholder groups, Organisations and Sectors

1. 6 The additional parties to be added are:-

- a micro-enterprise (broadly an enterprise with fewer than 10 staff and a turnover or balance sheet value not exceeding £2million);
- a charity with a net annual income of less than £1 million;
- a club, association or organisation with a net annual income of less than £1 million;
- a trustee of a trust with a net asset value of less than £1 million
- a personal representative or residuary beneficiaries of an estate where a person with a complaint died before referring it to the Ombudsman Scheme.

1. 7 Other individuals/sectors that are likely to be affected by the proposals:

- *Authorised Persons;*
- *HMCS;*
- *Approved Regulators, (as defined in Schedule 4 of the 2007 Act to include the Law Society, The General Council of the Bar and the Institute of Legal Executives) ;*
- *Members of the Public*

2. Costs and Benefits

OPTION 0: Base Case (do nothing)

2. 1 This is the do-nothing option. If the status quo is maintained and an Order for the inclusion of additional parties is not made, then the OLC scheme will be out of step with other similar Ombudsman schemes in the UK and this will create inconsistency between the different schemes for consumers seeking redress and ultimately, could lead to confusion and unfairness. The current situation, as outlined in s.128 of the Legal Services Act (2007) only entitles individual complainants to have complaints heard by the Ombudsman. If no Order is made under section 128, then the 2007 Act will remain as drafted with the limited scope for complaints to the OLC. Only individuals will be able to utilise the OLC services and all other small businesses, charities and personal representatives will be obliged to seek redress through the court system. These groups will continue to bear the costs associated with taking complaints through the courts systems and the inequity and inconsistency in the current system will be maintained, especially since the parties stated in the OLC recommendation are already eligible to use other Ombudsman schemes, including the Property Ombudsman and Financial Services Ombudsman.

2. 2 Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV).[4]

OPTION 1: Extend the parties to be included in the OLC scheme

2. 3 This option is to extend the parties who may be included in the OLC Scheme, as recommended by the OLC following a consultation in September 2009. The OLC considers that part of its role is to increase the inclusivity of the complaints process by providing an alternative means of dispute resolution which is easy to understand, quick, independent and free for consumers of legal services. These parties are already recognised under other Ombudsman schemes and it is therefore just and equitable within the regulatory objectives of the 2007 Act that they are also able to complain of poor service to the Legal Services Ombudsman. These proposals aim to extend the OLC's jurisdiction to cover micro-enterprises, small charities, clubs, associations, organisations, trustees of trusts or personal representatives or residuary beneficiaries of an estate where a person with a complaint died before referring it to the Ombudsman scheme (more details outlined in paragraph 1.6, above). Currently these groups are being unduly disadvantaged if they lack the means to pursue other routes of redress, e.g., through formal court proceedings, which can be lengthy and costly.

Costs of Option 1

Ongoing costs:

Legal service professionals

2. 4 The LSB and the OLC are funded by a levy on the Approved Regulators[5], which is paid by way of the Practising Certificate fee. An increase in the number of complaints made to the OLC is likely to lead to an increase in the cost of running the OLC and therefore a rise in the cost of practising certificate fees.

2. 5 If there are more complaints, it is likely that more solicitors will find themselves falling foul of the "third strike" rule and having to pay case fees (in the sum of £400) for each successful case against them. The basis of the three strike scheme is that solicitors will not be charged for administrative fees for investigating the first two proven cases against them. However, once a third service complaint has been proved, they will pay a penalty fee for every further case. The severity of this fine is to provide a reprimand for the solicitor, and encourage improvement in the service being provided;

[4] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

[5] Approved regulator means a body which (a) is designated as an approved regulator by Part 1 of schedule 4 to the Legal Services Act 2007 (with the exception of the Master of the Faculties); or (b) falls within the definition of "approved regulator" in section 20 of the Legal Services Act 2007 and is specified in an order made by the Secretary of Stare for the purpose of this subsection

2. 6 If more complaints are being undertaken through the Legal Ombudsman, there will be a lessened requirement for legal representation of those complaints, as the scheme is designed for easy use by Lay persons. This may result in loss of business for lawyers who would otherwise have been representing the complainants in court.

HMCS:

2. 7 Reducing the caseload of complaints that pass through the Courts system will reduce income for HMCS through a reduction in fees paid by users. It is not possible to monetise this reduction in income since fee levels vary hugely on a case-by-case basis, and disaggregated data are not available to support this.

Benefits of Option 1

Ongoing benefits:

HMCS and Members of the Public

2. 8 There will be savings to Her Majesty's Court Service if the number of complaints being taken through the courts decreases. This is particularly true as once a final decision has been made by the Ombudsman, there is no recourse to the courts except by way of Judicial Review. It is difficult to obtain figures for the likely savings, due to the OLC being a "start up" organisation at this time and unable to give much information about the likely volume or type of cases that they will be dealing with. However, on the "worst case scenario" basis of every case reaching a trial stage, and assuming that the trial involved a full day of court time, most likely before a Circuit Judge in a County Court, then the saving per hearing would be £1,632[6]. On the understanding, again gleaned from rough estimates of likely volume of complaints, that there are likely to be circa 1,300 complaints of the type discussed per annum, then the possible saving is as much as £2.1 million per year. This amount does not consider pre trial stages;

2. 9 As there will be no reason to have recourse to the court, there will be no court fees to be paid by complainants;

2. 10 Complainants will not be required to pay for lawyers to represent them before the Ombudsman;

2. 11 As a significant number of complaints will be removed from the court system, there should be more time available for dealing with other cases. In essence, removal of over 1,000 matters from the system ought to increase the efficiency of the court and reduce waiting times. This should improve the experience of the judicial system for other users, who are involved in matters which are not able to be dealt with by another form of resolution. It should be noted that this will only affect complaints made after 6 October 2010. All complaints made up to that point will progress along the normal channels.

2. 12 Under the current court fee structure, most court fees are set to ensure full cost recovery. For equity reasons, some fees are subsidised (set below cost) to ensure access to justice. If fees for complaint cases are currently subsidised, HMCS will benefit from extending the jurisdiction of the OLC through a reduction in the cost of the subsidy. It is not possible to monetise this reduction in the level of subsidy since fee levels vary hugely on a case-by-case basis, and disaggregated data are not available to support this.

Approved Regulators

2. 13 The Approved Regulators will save money as they will no longer be required to deal with service complaints from 6 October 2010, when the complaints regime becomes operational under the OLC. This will allow them to direct all their resources towards conduct related issues.

Net impact of Option 1

2. 14 Overall it is expected that a net benefit would arise from this option in that money is saved by HMCS and by the consumer who may now utilise the OLC. This, combined with the non monetary benefit of a faster, more user friendly and independent complaints service for members of the public, will outweigh any losses caused to the profession as a whole. In addition, improving complaints procedures is likely to increase the regard in which the profession is held, which can only be a positive outcome.

[6] This figure is the total daily cost including a judicial daily rate for a circuit judge and a daily admin cost; figures provided by HMC financial management.

3. Specific Impact Tests

Statutory equality duties

An Equalities Impact Assessment (EIA) is attached.

Competition Assessment

These proposals enable micro-firms (broadly those businesses with fewer than 10 staff and a turnover or balance sheet value not exceeding £2million) to address complaints through the OLC. There will be an impact on competition since those below the threshold will have access to cheaper dispute resolution and so will face lower costs while those above the threshold will continue to bear the costs of more lengthy dispute resolution. Micro-firms may gain a small competitive advantage relative to other enterprises, though the impact of this is likely to be minimal.

Small Firms Impact Test

It is anticipated that there will be both a cost and benefit impact to small firms if this proposal is implemented. It should be noted that "small firms" will include both small law firms and the additional parties.

Costs*:* The increased possibility of solicitors falling foul of the "third strike" rule, is likely to hit small businesses the hardest. This is because they are likely to have a lower turnover and the requirement to pay both the increased Levy fee (which will reach solicitors through increased Practising Certificate fees) and the £400 case fee for every subsequent successful claim against them will therefore be more difficult.

Benefits*:* As the Ombudsman scheme will provide a free and independent method by which to bring a service complaint against a legal professional, there will be no need to apply to the Courts for redress. This implementation of this policy, will expand the class of party which can use the Ombudsman scheme (which is at present only open to individuals) and will therefore save small businesses the time and money that they would be likely to spend attending court, paying court fees and instructing and paying a further legal professional to represent them.

Carbon Assessment

It is not considered that there will be any impact on Carbon Emissions from the implementation of this policy.

Other Environment

It is not considered that there will be any environmental impact from the implementation of this policy.

Health Impact Assessment

It is not considered that there will be any impact on human health from the implementation of this policy.

Human Rights

The policy is Human Rights Act compliant.

Justice Impact Test

Complaints that are made out-with the Ombudsman Scheme and that proceed all the way to trial will require court resources and judicial time. It is hoped that such applications will be extremely rare, as by expanding the class of complainant there will be fewer parties for whom expensive court action is the only option. Therefore the expected impact is not significant. If there is any impact, it is expected to be positive in that Court time will be made available to other types of more worthwhile action, rather than being tied up dealing with legal complaints.

Rural proofing

It is not considered that there will be any rural impact from the implementation of this policy.

Sustainable Development

This policy has no bearing on sustainable development, carbon emissions or other environmental concerns.

Privacy Impact Test (an MoJ Specific Impact Test)

It is not considered that there will be any impact on privacy from the implementation of this policy.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; The intention is that there will be a review upon the recommendation of the Lord Chancellor. This is anticipated to take place three years from the date of OLC "Go-Live" in October 2010.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] The review will be undertaken by the OLC as an exercise to check how many complaints have been made by the additional bodies added using this Order and whether their inclusion in the Ombudsman Scheme has been worthwhile.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] As the purpose of the review is simply to ensure that those complaining to the Ombudsman are having their complaints dealt with effectively, the approach is likely to be a simple scan of the type and volume of users. It is also likely that observations may be obtained from stakeholders if it is felt that further classes of complainant should be included in the Scheme.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] As the Office for Legal Complaints is effectively a start up organisation and has therefore not had the opportunity to collect any data, the baseline position will be the estimate of the number of previous complaints from the relevant bodies received from the current complaints handling organisations. It is thought that this numbers around 1,300 complaints a year.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] If the policy is successful there will be evidence of use of the Ombudsman system by all of the bodies referred to in the Order. Even if no such complaints have been received, the financial status quo will have been maintained and therefore modification of the policy is unlikely to be needed.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The OLC is currently setting up a system by which they will be able to keep records of the type of complaints they receive and the awards which are made. It is anticpated that this system will therefore allow review of how successful the inclusion of the new bodies within the Ombudsman's jurisdiction has been.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Annex 2: Definition of “authorised person”.

Section 18 of the Legal Services Act (2007) defines an “authorised person” as:

> (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5); or
>
> (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.