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OMBUDSMAN RULE CHANGES

Most firms are likely to find cause for concern in the long-awaited scheme rule changes that have just been announced by the Birmingham-based Legal Ombudsman. Not only are the possible awards increased and the time periods for complainants extended but new categories of complainants will be created. The changes will require a review of all existing client care materials, including retainer letters and terms of business documents, and any policy on document storage.

Perhaps the most straightforward of the announcements is an increase in the maximum award from £30,000 to £50,000 – both substantial figures for any firm to contemplate, but some way short of the £100,000 that had been suggested. Quite apart from the obvious concern as to the impact of a higher award on the firm's finances it will also be a concern to many that there is still no real appeal process from an award other than a judicial review. Given the prospects of securing a finding that the Ombudsman acted unreasonably it seems fair to regard the awards as being unduly arbitrary given the sums involved, particularly since the office can also reduce or cancel any invoice for services in addition to any such award.

A more radical change to the way the scheme has operated to date involves the £400 complaint fee. The principle of '*the polluter pays*' was enshrined in the Legal Services Act 2007 which created the Ombudsman's service. To date the principle has been that all firms – regardless of size or the volume of clients that are dealt with – will have two *'free'* complaints before the charge arises. These arrangements will see a significant change from 1st April, with *all* complaints received by the office becoming due for the £400 charge. The only concession will be that firms that have handled the initial complaints process in a *'reasonable'* manner will be eligible for a discretionary waiver of the fee.

This will no doubt cause concerns for many complaints partners, many of whom take the view that the dice are already heavily loaded in the client's favour. No doubt the financial press will highlight the rule changes and more clients will realise how much easier still it will become to use the threat of a complaint to the Ombudsman as a negotiating tactic for a reduction on a bill.

Perhaps the greatest concerns, however, are those that relate to the time periods and the categories of complainants. To date, the time limit that applied under the Scheme Rules was one year, with firms having been asked to advise clients that their complaints should usually be brought to the Ombudsman within six months of the determination of the complaints handling process in the firm. The time limit will now be extended to six years, or three years from the time that *"the complainant should have known about the complaint"*. Although this will usually remain within the file storage periods of most firms the prospects of providing a detailed response to an enquiry from the Ombudsman will inevitably reduce as time goes by and those involved leave the firm. Defending a claim of negligence from the file is one thing, but service standards might yet prove quite another.

Perhaps the most remarkable extension, however, is that the service will now be extended to *"prospective customers who could reasonably have expected to receive a service or were unreasonably offered a service they did not want"*. This seems to be an attempt to introduce the concept of pensions or other financial mis-selling to legal services, and to refute any claims that the firm acted unreasonably in the way that it dealt with prospective clients it will have to keep notes of all such discussions for the usual file retention period of six years – a counsel of perfection for many of the more hard-pressed high street firms that see a higher volume of abortive enquiries from their more varied client base.

All in all it seems odd that a service that stresses the commercial nature of its operations should be so attracted to some very legal concepts such as the six year limitation period. Professional indemnity insurers and their legal advisers will no doubt be scrutinising these rules changes in order to assist firms defend complaints which are in truth negligence claims. However the most daunting aspect of this is the lack of a proper appeal process if the LeO reaches a questionable decision. The judicial review process may be overworked yet again. ■

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