LeO consultation on rule changes response

Executive Summary

CILEx Regulation broadly supports the Legal Ombudsman's proposed Scheme Rule, case fee reforms and publishing decisions and agrees with the objectives of improving first-tier complaint handling, encouraging earlier resolution, increasing efficiency, and enabling LeO to focus resources where it can achieve the greatest benefit for consumers and providers.

We believe, however, there are areas where the proposals could be strengthened to support successful implementation. These include:

- Ensuring that revised jurisdiction requirements do not create unintentional barriers to access to LeO. Some consumers have trouble articulating or evidencing service failure and its impact. Further detail regarding the support, guidance and reasonable adjustments available would provide greater assurance that access will remain fair and inclusive.

- Giving consideration to managing consumer expectations where LeO's approach to accepting complaints differs to legal service providers

- Maintaining regulatory intelligence sharing for complaints falling outside the new LeO jurisdiction.

- Preserving alternative routes to complain for consumers facing digital accessibility barriers.

- Ensuring case fee arrangements remain fair and proportionate across the sector. While the proposals have potential to encourage effective complaint handling and earlier resolution, further consideration could be given to their impact on smaller firms, sole practitioners, legal aid providers and firms operating in areas that experience higher complaint volumes.

- Balancing early resolution incentives with learning and service improvement by legal services providers.

- Enhancing transparency through contextualised publication of Ombudsman decisions. This would support accurate consumer interpretation of decisions and promote a balanced understanding of provider performance.

Q1. Do you agree with the principles underpinning LeO's proposed changes to its Scheme Rules?

CILEx Regulation broadly agrees with the principles underpinning LeO's proposed changes to its Scheme Rules. We recognise the challenges posed by increasing demand and support measures intended to improve first-tier complaint handling, encourage earlier resolution of complaints, and ensure resources are focused on matters where LeO can deliver meaningful outcomes. These objectives align with the aims of our Complaint Handling Rules and our broader commitment to effective consumer redress. However, there are several areas where the proposals could be further strengthened to support successful implementation, including:

- ensuring the proposed fee structure remains fair and proportionate for smaller firms, sole practitioners and providers operating in areas that generate higher complaint volumes;
- supporting vulnerable consumers and those who may find it difficult to articulate detriment, so that revised jurisdiction requirements do not inadvertently affect access to redress;
- providing clear communications to help consumers understand circumstances where LeO's approach may differ from regulatory approach; and
- considering how LeO can continue to capture and share with regulators valuable intelligence from complaints falling outside LeO's jurisdiction

- **Addressing incoming levels of demand**
  While the proposed changes may help manage demand, complaint volumes are also influenced by wider factors including consumer expectations, service quality and awareness of available redress mechanisms. We therefore consider that the proposals should contribute to demand management, but it is possible that, in themselves, they may not significantly reduce complaint volumes.

- **Ensuring LeO can focus on complaints where it can make a difference**
  We support LeO's intention to focus resources on complaints where its intervention is most likely to secure meaningful outcomes for consumers and providers. A more targeted approach should enable LeO to devote greater attention to cases involving identifiable detriment and where independent intervention is capable of resolving disputes or securing appropriate redress.

  However, the effectiveness of this approach will depend upon ensuring that consumers who may find it difficult to articulate detriment or navigate procedural requirements continue to have meaningful access to redress.

- **Ensuring LeO's process is proportionate, effective and efficient**
  Many of the proposed changes could contribute to improving efficiency and reducing unnecessary escalation. Proportionality will reflect operational requirements for example around determining detriment in a complaint, navigating revised processes and the approach taken to avoid creating obstacles for vulnerable consumers or individuals who may find it difficult to express their concerns clearly.

- **Encouraging resolution of complaints at the earliest appropriate opportunity**
  We are supportive of measures that encourage effective first-tier complaint handling and early resolution of complaints. The proposed changes have potential to create stronger incentives for firms to engage constructively with complaints at an early stage, helping to achieve faster outcomes for consumers.

  While we recognise the rationale for the proposed fee structure, careful consideration should be given to its potential impact on smaller firms, sole practitioners and providers in areas generating higher complaint volumes. Any approach should seek to ensure that fees remain fair and proportionate, particularly where firms have made reasonable and timely efforts to resolve complaints.

  While incentives for early resolution are welcome, LeO may wish to consider how the framework can continue to encourage appropriate investigation, organisational learning and service improvement alongside the objective of resolving complaints at an earlier stage

Q2. Do you support the proposed substantive changes to the Scheme Rules? If not, or not fully, why – and what changes would you suggest?

While we broadly support the proposed substantive rule changes, several common themes arise across the proposals:

- o The potential loss of regulatory intelligence where complaints no longer fall within LeO's jurisdiction, reducing information available to regulators for risk-based supervision.

- o The introduction of inconsistency between LeO's proposed definition of a complaint and that used by many regulators could create consumer confusion where a consumer, having used a firm's complaint procedure and being informed of their right to complain to LeO, has their complaint rejected by LeO as out of jurisdiction. LeO will need to manage consumer expectations.

- o Particular consideration may be needed to ensure that requirements relating to explaining detriment and complying with procedural requirements do not inadvertently disadvantage vulnerable consumers, digitally excluded individuals or those who may find it more difficult to articulate their concerns.

Rule 1.6 – Establishing the Impact of the Service
The proposed change to Rule 1.6 will result in a narrower definition of a complaint than that currently applied by LeO, by many legal regulators and under the LSB's section 112 requirements. Consideration should also be given to the potential for consumer confusion where complaints are treated at first-tier complaints and consumers are informed that they may refer the matter to LeO, only to find that it subsequently falls outside LeO's jurisdiction.

While recognising LeO's objective of focusing on complaints where there is a clear impact or detriment requiring remedy LeO may wish to give further consideration to how consumers, particularly those in vulnerable circumstances, will be supported where they find it difficult to articulate or evidence the detriment they have experienced.

Providing this support would help ensure the proposed approach does not inadvertently create additional barriers to redress and that complaints involving genuine consumer detriment remain within scope where appropriate.

We welcome LeO's commitment to providing appropriate support to consumers who face barriers in explaining their complaint or the impact of a service failing. However, the consultation provides limited detail on how this support will operate in practice.

The proposals would benefit from additional detail regarding how LeO will identify consumers who may require assistance, what support or reasonable adjustments may be available, and how decision makers will approach circumstances where detriment is evident but difficult for a consumer to articulate or evidence directly. This would provide greater assurance that the proposed change will not disproportionately disadvantage vulnerable consumers.

We encourage LeO to consider how to capture and continue to share with regulators valuable information on complaints excluded by any new jurisdictional threshold. As LeO will necessarily receive sufficient information to determine whether a complaint falls within its remit, data relating to complaints that are screened out may still provide important insights into consumer experiences, market trends, emerging risks and potential regulatory issues. Sharing this intelligence with regulators would help preserve an important source of evidence and support effective risk-based supervision.

Rule 4.5 – Managing Historic Complaints
We note that the proposed approach differs from our Complaint Handling Rules, under which there is no equivalent long-stop period. LeO will need to consider how to manage consumer expectations and potential confusion where a consumer, having used a firm’s complaint procedure and being informed of their right to complain to LeO, has their complaint rejected by LeO as out of time.

Additional information on the rationale for selecting a 12-year period would assist stakeholders in understanding how the proposed timeframe has been assessed and justified.

This would be particularly valuable to understand how the proposed timeframe has been assessed in the context of legal services where issues may only come to light many years after the original work was undertaken, such as conveyancing and wills.

Rule 5.1 – Standardising How Complaints Are Made to LeO
We recognise the benefits that a standardised online complaint form may bring in terms of efficiency, consistency of information received and enabling complaints to be progressed more quickly.

However, we consider it important that any requirement to use an online form is implemented in a way that remains accessible and responsive to consumers' differing needs.

Research on digital exclusion highlights that, while many consumers have access to the internet, some may nevertheless face barriers in using digital services independently. These barriers can arise for a variety of reasons, including disability, health conditions, low literacy, language needs, limited digital skills or wider personal circumstances.

Access to the internet does not always mean that a consumer can easily or independently engage with a digital complaints process, and this may be an important consideration in implementation.

We therefore welcome the Legal Ombudsman's recognition that there may be circumstances in which consumers cannot use the online form. Greater clarity would be helpful on how such circumstances will be identified, what alternative channels will remain available, and how consumers will be informed of these options.

The proposals could be strengthened by retaining accessible alternative complaint routes alongside the online form, while promoting digital submission as the preferred channel where appropriate rather than mandatory, route. This would support operational efficiency while ensuring access to redress is not dependent on a consumers' ability to navigate a digital process.

Rule 5.7(b) – Dismissal Because of a Lack of Detriment

We recognise the need for LeO to focus its resources on complaints involving substantive detriment, to deliver a proportionate service in the context of finite resources and increasing complaint volumes.

It will be important to ensure that this requirement operates in a way that remains accessible to consumers who may find it more difficult to articulate or evidence detriment. It also has the potential to create confusion for consumers regarding which complaints can be considered at first-tier and second-tier stages. We refer to our fuller comments under Rule 1.6.

We also refer to our point in response to Rule 1.6 about capture and continued sharing with regulators of valuable information on complaints dismissed because of lack of detriment.

Rule 5.7(r) – managing unacceptable behaviour

We agree that no one should be subjected to unacceptable behaviour in the course of their work and support the introduction of a rule to address this. As with other proposed changes, we would encourage clear communication to complainants about what constitutes unacceptable behaviour, supported by transparent guidance for LeO decision-makers on how the rule will be applied.

We also consider it important that LeO provides clear, accessible information for both complainants and service providers about the types of conduct that may be regarded as unacceptable. This should include practical examples to help parties understand the standards expected of them throughout the complaints process.

In addition, LeO may wish to consider positioning dismissal of a complaint or referral to a regulator as a measure of last resort, except where particularly serious circumstances justify more immediate action.

Except in the most serious cases, parties should be given an opportunity to modify their behaviour before such action is taken. This should include a clear warning identifying the specific conduct that is considered unacceptable, explaining why it is problematic, setting out the behaviour expected going forward, and making clear the potential consequences of failing to comply, including dismissal of the complaint or referral to the relevant regulator. We note that unacceptable behaviour by a service provider would be treated as a conduct matter and referred to the appropriate regulator.

Additional information regarding how this process would operate in practice, including any assessment of likely referral volumes, would assist regulators in understanding potential operational impacts.

Rule 5.19-5.21 – Resolving Complaints Through an Investigator's Findings
We agree that it is not proportionate for all complaints to progress automatically to an Ombudsman for a final decision and recognise the potential efficiency and timeliness benefits of this proposal.

However, we note that consumers may find it challenging to identify and articulate grounds for disputing an investigator's findings, particularly where the proposed criteria include concepts such as a "material error of fact or law".

The proposals could benefit from safeguards that ensure consumers with legitimate concerns are able to understand and engage with the escalation criteria effectively.

The effectiveness and fairness of the proposed approach will therefore depend on clear explanations of the escalation criteria, accessible guidance, and appropriate support for consumers, particularly those in vulnerable circumstances.

We welcome the commitment to supporting parties who face barriers in engaging with the process. We encourage LeO to monitor the operation of the revised rules to ensure that they do not inadvertently restrict access to Ombudsman decisions where these are necessary to achieve a fair outcome.

We also encourage LeO to consider how information from complaints resolved on the basis of investigator findings, without referral to an Ombudsman, can be captured and shared with regulators to provide regulatory intelligence.

Q3. Do you support the proposed additional administrative changes to the Scheme Rules? If not, or not fully, why – and what changes would you suggest?

We support administrative changes that improve clarity, consistency and operational efficiency within the Scheme Rules. Clearer rules should assist both consumers and legal service providers in understanding the complaints process and help promote more consistent decision-making.

Q4. Do you agree with the principles underpinning LeO's proposed changes to its case fee arrangements?

- **Encouraging better first tier complaint handling**
- **Encouraging resolution of complaints at the earliest appropriate opportunity**
- **Ensuring a fair distribution of costs between providers according to demand on LeO's resource**

Please explain why you've given that answer.

The proposed fee structure has the potential to incentivise firms to deliver good service, operate effective complaint-handling processes and engage proactively with LeO to resolve complaints at an early stage. We therefore recognise the rationale for introducing a fee structure that places greater emphasis on early resolution. However, careful consideration should be given to the potential impact on different types of providers and potential behavioural incentives created by the proposed fees.

Further consideration could be given to the proportionality of the proposed fees and their potential impact on smaller firms, sole practitioners, providers undertaking low-margin work including legal aid services, and providers operating in areas that generate higher complaint volumes. Investigation fees of £750, Ombudsman decision fees of £1,500 and the proposed £400 charge for missing complaint-handling deadlines may represent a significant financial burden for some providers, in certain cases approaching or exceeding annual regulatory costs. Larger firms are generally better placed to absorb such costs and often have dedicated complaint-handling resources. LeO should therefore consider whether a more proportionate approach, such as fee bands linked to firm size, turnover or complaint volumes, would better reflect differences in capacity and risk.

It may be helpful to consider whether the proposals can further recognise circumstances where firms have made reasonable and timely efforts to resolve a complaint, but the matter nevertheless progresses to LeO. Providers should not face escalating fees where they have acted appropriately and engaged constructively in attempts to achieve resolution. We would therefore encourage LeO to explore mechanisms that recognise genuine attempts by providers to resolve complaints appropriately and proportionately before escalation.

LeO may wish to monitor whether the fee structure creates perverse incentives for firms to choose to settle complaints for commercial reasons rather than risk higher LeO fees Whilst this may increase early resolution, it could reduce opportunities to identify root causes, learn from complaints and improve service delivery.

Equally, awareness of the fee structure may incentivise some consumers to pursue complaints, particularly those involving fee reductions or modest financial redress, in the expectation that firms will seek to avoid escalation costs.

We welcome the proposed fee-waiver mechanism. However, the requirement for firms to have taken "all reasonable steps" to resolve a complaint might set a higher threshold than exists in our Complaint Handling Rules. LeO should provide clear guidance on how this test will be assessed and applied consistently, transparently and objectively.

More broadly, increased and less predictable complaint-related costs may require firms to make higher financial provision for complaints and redress which may ultimately be reflected in higher costs for consumers, particularly in lower-margin areas of practice. There is also a possibility that some providers may become more risk-averse in the services they offer, potentially affecting access to certain legal services.

Overall, we expect the proposed fee structure to encourage stronger first-tier complaint handling and support earlier resolution of complaints. However, complaint volumes are influenced by wider factors such as consumer expectations, and awareness of redress mechanisms. The proportionality of the proposed fee structure, and its potential unintended consequences for both providers and consumers, should therefore be kept under review.

Q5. Do you agree that legal providers who don't respond to complaints within prescribed eight weeks should pay an extra fee? If not, how do you think this issue should be addressed?

We recognise that the introduction of an additional fee for firms that fail to provide a final response to a complaint within the prescribed eight-week timeframe is intended to encourage timely complaint handling. This objective is consistent with the principles underpinning our Complaint Handling Rules and reflects the importance of ensuring consumers receive prompt and effective resolution of their complaints.

While prompt complaint handling is important, consideration could be given to circumstances in which delays may arise for legitimate reasons, such as particularly complex complaints, the need to obtain information from third parties, or situations where the complainant has requested additional time to provide relevant evidence.

The proposals could be strengthened by incorporating a degree of discretion, or limited exemptions, for genuinely exceptional circumstances where delays are outside a firm's reasonable control. This could help ensure that the fee achieves its intended behavioural objective without unfairly penalising firms where delays are outside their reasonable control.

Additionally, LeO could consider the impact of the proposal on smaller firms, for whom a fixed charge may represent a proportionately greater financial cost.

Increasing complaint-related costs and financial uncertainty may lead firms to hold higher provisions against potential complaints. Over time, there is a risk that these additional costs could be reflected in higher prices for consumers, potentially undermining the wider objective of delivering fair and accessible legal services.

On balance, while we support measures that encourage timely complaint resolution, we believe the proposed charging model would be strengthened by greater flexibility to recognise exceptional circumstances and demonstrable efforts by firms to engage constructively with the complaints process.

Q6. Do you agree that legal providers who make the most significant demands on LeO's resources should pay a bigger share of LeO's overall costs? Please explain why you've given that answer.

In principle, we agree that legal providers who place the greatest demands on LeO's resources should contribute a larger share of its costs. However, the level of demand placed on LeO is influenced not only by providers' conduct but also by consumer behaviour, the nature of the legal services provided, and broader complaint patterns.

LeO's own data indicates that some areas of legal practice attract higher volumes of complaints than others. As a result, firms operating in those areas could face a disproportionate share of costs simply because of the type of work they undertake, rather than because they provide a poorer standard of service. This will be more pronounced where the providers are small firms or sole practitioners.

Consideration may be given to how the proposed fee model could affect cost predictability for firms and whether any mitigations may be appropriate.

Higher and less predictable case fees are likely to be reflected in the cost of legal services, increasing prices for consumers, particularly in areas of law where complaint levels are inherently higher. Any approach to cost allocation should therefore strike a balance between ensuring that firms contribute fairly to LeO's costs and avoiding disproportionate impacts on particular areas of practice or on access to legal services for consumers.

Q7. Do you agree that all complaints within LeO's jurisdiction should be chargeable for case fee purposes, with a waiver applicable in certain circumstances? Please explain why you've given that answer.

We refer to our concerns above regarding the disproportionate impact on smaller firms and those providing legal services which attract high numbers of complaints. Consideration could be given to mechanisms to waive case fees where firms have demonstrably taken reasonable and proactive steps to resolve complaints at the earliest opportunity. The conduct of the complainant should also be considered when determining whether a fee is appropriate. These safeguards would ensure that the scheme operates fairly and does not impose disproportionate costs on firms within LeO's jurisdiction.

While we recognise the rationale for applying case fees to all complaints within jurisdiction, the proposals can be strengthened through robust and clearly defined waiver provisions.
As noted above, we are concerned about the disproportionate impact that this approach could have on smaller firms and providers of legal services which receive higher volumes of complaints.

Q8. Do you agree that the proposed levels of case fees incentivise better first-tier complaint handling and resolving complaints at the earliest possible stage? Please explain why you've given that answer.

The proposed fee structure has the potential to incentivise firms to provide good, and where necessary, better first-tier complaint handling and resolving complaints at the earliest possible stage. However, careful consideration should be given to the potential impact on different types of providers and potential behavioural incentives created by the proposed fees as set out in response to question 4.

Q9. Do you agree with the principles underpinning LeO's proposed change in policy on publishing ombudsman decisions? Please explain why you've given that answer.

We welcome the principle of greater transparency in the publication of ombudsman decisions. However, we note that LeO may wish to consider that publication could have a proportionately greater reputational impact on smaller firms and whether additional contextual information may assist readers in interpreting published decisions fairly.

Greater transparency could also benefit firms where decisions are made in their favour, support consumers to make more informed choices, and encourage the maintenance of high service standards across the sector.

Q10. Do you agree that all Ombudsman final decisions should be considered for publication, ensuring the consumer can't be identified? If not, what are your concerns, and how could they be overcome?

We agree that all Ombudsman final decisions should be considered for publication, provided consumers cannot be identified and where it is proportionate to do so. However, we are of the view that publishing trends, common themes and learning points may be a more useful use of resource than publishing individual complaints.