

**Law Society response:**  
**OLC Business Plan & Budget 2022-23**  
**Consultation**

13 December 2021



## Introduction

1. The Law Society is the independent professional body for solicitors in England and Wales. We are run by and for our members. Our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law.
2. The Law Society welcomes the opportunity to respond to this consultation.<sup>1</sup>

## Executive summary

3. The Legal Ombudsman (LeO) has been very open about the challenges it has faced this business year and the reasons why it has not and will not be able to reach the performance targets predicted in its Business Plan 2021-22.
4. We welcome the level of engagement we have had with LeO about the challenges ahead as it is vital for the solicitors' profession and the public that things improve, and we are keen to offer our views as to how this might best be achieved.
5. We recognise, and there is no doubt, that the new LeO leadership team has worked hard to address a number of problematic issues within the organisation itself, as well as external challenges. Bearing in mind these difficulties we are pleased to note that it has made progress in navigating some of the issues successfully, however, as the consultation document itself acknowledges, '*the Legal Ombudsman is an improving organisation, but it is not improving quickly enough*'.<sup>2</sup>
6. When the Legal Services Board (LSB) approved the budget increase of 13% in March 2021, the OLC re-forecast LeO's performance for 2021-22 to take the increase into account. According to the OLC the re-forecasted figures were a minimum that could be expected but could have been higher with various innovations that were planned.<sup>3</sup> This minimum level of performance has regrettably not been reached. Although an explanation has been provided, many of the challenges encountered by LeO ought to have been foreseen. Indeed, a number were outlined in our Response to the Business Plan 2021-22<sup>4</sup>.
7. Accordingly, our overarching concern is that whilst there has been some improvement in LeO's performance it has not been to the levels expected and at the required pace. We remain unsure about whether the projections about future performance are realistic despite the assertion in the Plan that '*enhanced understanding and reporting means that Legal Ombudsman can offer assurance to stakeholders that the forecast positions are*

---

<sup>1</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation](#)

<sup>2</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p3\)](#)

<sup>3</sup> [Legal Ombudsman in last chance saloon after budget increase approved](#) Legal Futures 23 March 2021

<sup>4</sup> [Law Society Response to OLC Business Plan & Budget 2021-22](#)

*robust and are based on real time information.*<sup>5</sup> The Law Society wholeheartedly supports LeO's aspiration to improve and to do so quickly. However, experience suggests that without a fundamental change to the current complaints' regime, gains at the organisational level are likely to be moderately incremental only. We would suggest that a greater degree of realism about the outlined targets is needed.

8. We share LeO's concerns about the current performance levels of staff and would encourage LeO to consider looking at how to substantially improve individual investigator productivity and definitively address the underlying causes of staff underperformance as well as high sickness and attrition levels.
9. Reducing the backlog of cases in LeO's Pre-assessment pool (PAP) must remain a priority. We suggest that a dedicated team should target the PAP backlog with a checklist to help sift out cases which are appropriate for early closure or dismissal. More detail is provided below at paragraph 22. LeO is also urged to implement the '*radical options*' outlined in the paper such as outsourcing, demand management and reviewing the Scheme Rules.
10. LeO also needs to find more efficient ways of providing a signposting service to those calls which are outside the scope of its jurisdiction and deprioritise learning and insight work until its performance has substantially improved.
11. We also note reference to extending the scope of LeO's services to cover unregulated providers. We would argue that there should be no consideration of such an extension until performance issues are in hand and that the regulated sector should not shoulder any costs associated with doing so.
12. The PAP must be subject to a '*radical options*' driven solution to put at the heart of the process the public interest of a functioning legal complaints resolution service and the reputational risk to the solicitors' profession. Any proposed Scheme Rules changes need to ensure a streamlined and proportionate approach with an emphasis on recognising a firm's reasonable offer for resolution of a complaint, which often fulfils the public interest and professional sectors' objectives. It would also mean less budget is wasted in tackling those complaints for which a reasonable and fair outcome has been available to the complainant for a period of time which does not accord with their preferred outcome. We suggest LeO's review of outcomes and subsequent endorsement will provide reassurance to consumers that, objectively, the outcomes are within the band of reasonable responses from service providers (whether solicitors or other professionals). Clearer guidance on compensation levels from LeO would also help service providers to

---

<sup>5</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p20\)](#)

make reasonable offers as well as manage the expectations of consumers of legal services.

13. We also have concerns about the increased budget request, particularly when assessed against this year's underspend<sup>6</sup>, LeO's performance to date and the current economic challenges the profession faces caused by the pandemic. In recognition of the seriousness of those difficulties for the profession, and with many members still struggling, the Law Society decided once again not to increase the practising certificate fee this year. LeO therefore needs to consider how it can make costs savings through greater efficiencies.
14. We set out detailed comments on the OLC's Business Plan and Budget below and have responded to the specific questions posed at the end of this response.

### **Section One:2021/22 Mid-year Review**

15. We are pleased to note that LeO has taken onboard some of our suggestions such as early notification to service providers of a complaint being lodged (which has been welcomed by our members) and improvements to early resolution processes (which have already proved to have a beneficial impact on case closures and are likely to have greater impact in the longer term).
16. We welcome the fact that investigations are being conducted more efficiently, resulting in speedier outcomes across all complexity levels, as well as LeO managing to recruit more staff despite the challenging employment market described in the consultation paper.
17. It is also positive to see that LeO is delivering more case closures with fewer investigators and has begun the task of developing and training staff in its General Enquiries Team (GET) to prepare files for investigators and to close low complexity cases at an early stage.

### **Priority One: To support existing staff to increase performance and productivity**

18. We appreciate that cultural changes to an organisation take time to bed down. It is evident that LeO is striving to make improvements and introduce the management changes which have contributed to attrition levels and impacted case closures. We agree with LeO's view that *'it is the right thing to do for stakeholders and customers.'*
19. We also agree that it is an important priority to support and develop new and existing staff, and some measures outlined in the paper<sup>7</sup> to achieve this aim appear sensible.

---

<sup>6</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p35\)](#)

<sup>7</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p22-25\)](#)

Nevertheless, we are surprised that productivity is so low, at only five closures per month per investigator. Individual investigator productivity needs to be substantially improved and remain at a consistently improved level. However, it is unclear how LeO proposes to raise productivity.

20. It is equally important that LeO definitively addresses the underlying causes of staff underperformance, as well as high sickness and attrition levels. While some of LeO's current staffing and performance issues may be attributable to the current change programme, or the prevailing condition of the wider economy, we note that these issues predate the COVID crisis. This is the key area for improvement if LeO is to meet demand for its service and reduce the pre-assessment pool within any reasonable timeframe.

**Priority Two: To identify innovation opportunities that speed up the complaints process.**

21. LeO has known for some time that the PAP is a major problem and despite being the top priority in last year's Business Plan, there has been no reduction in numbers. The PAP has actually increased to more than 5677 (figures indicated as at September 2021), which is almost 9% above business assumptions at the mid-year point. The position will deteriorate further as LeO predicts that by March 2022 cases in the PAP will be 6,732<sup>8</sup>. Accordingly, LeO's performance raises reputational risks for the sector.
22. Whilst it has identified that resources need to be concentrated at the frontend of its process to avoid many more cases going into the PAP, a dedicated team should also target the backlog as soon as possible. That team may be assisted by a checklist to help sift out low complexity cases where, for example:
- the case is outside its jurisdiction
  - the service provider has provided a reasonable service or
  - where the complainant may have changed their mind.

According to the consultation paper, LeO believes that around 25% of cases in the PAP could be suitable for early closure or dismissal for such reasons. This can be tackled within existing resources and we provide more information about our idea at paragraph 27 below.

23. It is important to understand what LeO can do to significantly reduce the PAP. The consultation paper suggests a few possible '*radical options*', including *demand management, early resolution and proportionality*, as well as *outsourcing and*

---

<sup>8</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p19\)](#)

*partnerships*. If any of these are to be taken forward LeO needs to proceed swiftly. The Law Society accepts that the Legal Services Act 2007 limits the scope for LeO ombudsmen's functions to be outsourced. Yet outsourcing would be an obvious answer and, if undertaken appropriately, would be a highly effective means of making sufficient inroads into the growing backlog of cases in the pre-assessment pool both now and in the future. This has the strong potential to make LeO a much more cost-effective organisation. Its predecessor, the Legal Complaints Service, outsourced work on the basis of fixed costs per case resulting in an increase in case closures and substantial costs savings.

24. It is difficult to see how this challenge can be met other than by an appropriate amendment to the primary legislation. However, should such a proposed amendment be tabled, it must contain adequate safeguards to ensure that independence (which was a key element of the rationale behind the establishment of the Office for Legal Complaints) is retained, that any outsourcing achieves speedy and effective complaint-handling, and that outsourcing is utilised only to the extent and for the period necessary to deliver real improvement. LeO would also need to ensure that the work is outsourced to people with appropriate expertise, skills and knowledge to ensure fast results. The Law Society would in principle support proposals to amend primary legislation in that regard.
25. A further suggestion is a review of LeO's Scheme Rules. The Law Society is sympathetic to the desire of the Legal Ombudsman to reduce the size of the PAP by amending the Scheme Rules. This would enable some complaints to be dismissed without detailed consideration, in certain circumstances, at the earliest possible stage and certainly before they were accepted as eligible for determination. Those circumstances should broadly mirror the current grounds for dismissal of accepted complaints set out in Scheme Rule 5.7, subject to appropriate safeguards to reduce the risk of inadvertent refusals of complaints with merit.
26. Whilst LeO has indicated that it is minded to take these '*radical options*' to improve performance levels, it cannot realistically predict when these measures can be implemented, or what impact, in terms of resource and costs savings, they may deliver.
27. Less radical methods, in the meantime, that could help speed up the complaints process (as well as tackling the PAP) are the increased and better use of automation and more efficient deployment of existing resources. LeO has indicated that it receives over 110,000 enquiries to its General Enquiries Team (GET), and that often the enquiries received do not relate to a complaint about legal services. According to its figures, only about 7,000 of these end up as genuine complaints about legal services. It has said that it is a useful general signposting service to consumers. However, a comprehensive automated telephone service could still continue to signpost some non-

legal service complaints to appropriate agencies, freeing up human resources, thereby ensuring that only genuine complaints about legal services are transferred to GET agents – which is ultimately LeO's role. A chat bot and/or an online chat service - could also be set up, which would allow experienced operators to handle 2-3 queries at once, which could improve efficiency hugely. This could free up a considerable amount of GET staff member time to work on sifting through PAP files, which would directly benefit LeO's customers as well as reducing demand for LeO resources including investigators, further down the line as the consultation states that otherwise PAP files *'require additional ongoing communication and can mean longstanding complaints are more challenging to resolve. The passage of time can cause the parties to a complaint to become more entrenched in their positions, or the recall of events can become less clear'*<sup>9</sup>.

28. LeO's powers and duties extend only towards those matters which are within its jurisdiction and not those which fall outside. As with any public body, LeO must discharge its duties using its resources as effectively and efficiently as possible, for the benefit of its service users. Its service users are those who wish to make complaints about services provided by regulated persons. We would question whether the amount of resource devoted to complaints or enquiries which are clearly outside the scope of LeO's services represents an efficient and effective use of its resources. Accordingly, we urge LeO to consider adopting options, such as those suggested above as well as others, which have been embraced by other businesses to ensure that efficiencies are made on the use of human resources and time resulting in cost savings and to focus on the actual customers of the business.
29. We agree that specific initiatives which have been implemented and are producing results, outlined in the consultation, such as 'Guided Negotiation' or 'Reasonable offer Made' or the Robotic Process Automation should be used to maximise closures and are a better use of its resources. It could also consider removing negligence cases from its jurisdiction and concentrate on dealing with service-related complaints only.

**Priority Three: To focus learning and insight work on providers who require support to prevent and resolve complaints**

30. We repeat what we said in our Response to LeO's Business Plan consultation last year, *'Providing learning and appropriate feedback to the legal sector is important to prevent complaints arising in the first place, to improve first-tier complaints handling, and to prevent complaints being escalated to LeO. However, LeO can only effectively provide*

---

<sup>9</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p11\)](#)

*learning and feedback if it deals adequately with the complaints raised with it in the first place. ... LeO's service issues and backlog should be the immediate priority.*<sup>10</sup>

31. The consultation indicates that LeO wants to increase the visibility and impact of casework to increase transparency and enhanced reporting. The Law Society published a comprehensive response to LeO's Transparency and Reporting Impact discussion paper in January 2020<sup>11</sup>. We reiterate that this work should only be prioritised once LeO has achieved adequate performance levels. Our reservations about this issue were fully covered in our Response. It is difficult to support the initiation of these types of projects because it means diverting budgetary and human resources at a time when LeO should remain focused on delivering on its core business priorities.
32. The paper also indicates that in 2022/23 LeO will support wider sector work in this area and redress for the unregulated sector<sup>12</sup>. It would be helpful to have further information about this so that we can better understand what is envisaged. It is particularly important to know whether it will impact current business needs, given the assertion that experienced staff are already fully stretched dealing with the changes LeO is trying to implement. Funding for such work should not be derived from the regulated sector. We would be grateful for LeO's clarification regarding the proposed work involved and how it will be funded.
33. We acknowledge that LeO has undertaken some valuable work providing targeted learning and insight to service providers and this should continue. We would be pleased to continue our collaborative work with LeO to support our members in preventing complaints from arising or in helping them to resolve first tier complaints more efficiently.

## **Section Two: Looking forward - what can customers expect through to 2023-24**

34. We have previously raised concerns about whether LeO's performance forecasts are realistic, and those concerns have been realised. This section of the Plan provides a revised performance trajectory for the remaining business year, to March 2022. It predicts case closures will only be 5,069 (or 6,177 if early resolutions closures are included) therefore much lower than the 7,057 predicted in last year's Business Plan. For the same period the PAP is forecast at 6,732 against last year's prediction of 4,696.<sup>13</sup> Our Response to last year's Business Plan raised concerns about the levels forecast and how the figures had been calculated.<sup>14</sup>

---

<sup>10</sup> [Law Society Response to OLC Business Plan & Budget 2021-22](#)

<sup>11</sup> [Law Society Response to LeO's Transparency and Reporting Impact Discussion Paper \(Jan 2020\)](#)

<sup>12</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p30\)](#)

<sup>13</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p19\)](#)

<sup>14</sup> [Law Society Response to OLC Business Plan & Budget 2021-22](#)



35. Again, lower than anticipated case closures over the summer months is not a surprise bearing in mind that last year, due to the pandemic, staff were allowed special leave for caring responsibilities which resulted in staff not taking all of their allocated annual leave. Consequently, staff were allowed to carry forward higher than usual levels of annual leave entitlement to this year. This has resulted in increased leave being taken over the summer months, reducing operational working hours and resulting in much fewer case closures than predicted. This was a logical outcome of the actions taken by LeO and ought to have been reasonably foreseen by leadership in conducting the forecast exercise for this year, particularly as we indicated in our Response last year, *'It seems likely that the approach taken will continue to impact performance irrespective of the plans and budget'*.<sup>15</sup>
36. Going forward, the 2022-23 Plan predicts much higher performance levels than this year. For example, the paper states: *'The forecast shows that with budgeted FTE in post and increased productivity, the wait time in the Pre-Assessment Pool will reduce by the end of 2022/23 by 29%, in comparison to our final projected position in 2021/22.'*<sup>16</sup> Apart from assuming higher levels of investigators being employed, it is unclear what other variables have been taken into account to forecast such levels, how LeO proposes to increase individual investigator productivity on a consistent basis or how it has come to the conclusions reached.
37. Another example in the Plan which raises our concerns about realistic forecasting and where little information, or evidence has been provided to support the forecasted performance is where the Plan states *'By 2023/24 a significant change is made with sustained delivery of closures of 800 per month which includes the expected addition of early closures. This delivers closure levels significantly above historic peak performance monthly closure averages and provides a significant rate in reduction of the PAP. By the end of 2023/24 forecasts show that overall output for the organisation will sit at 9,708 closures which is over double the rate of output achieved in 2020/21.'*<sup>17</sup>
38. Previously LeO had indicated that the demand for its service was relatively stable throughout the pandemic. However, the consultation paper states that incoming cases for the PAP actually increased between 2019/20 and 2020/21 by 23%. We are concerned about the inconsistent information and it would be helpful if LeO could provide an explanation for the steep increase. The paper goes on to say that demand will be stabilised going into 2022/23 but no evidence is provided for this assertion.

---

<sup>15</sup> [Law Society Response to OLC Business Plan & Budget 2021-22](#)

<sup>16</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p17\)](#)

<sup>17</sup> [Legal Ombudsman Business Plan & Budget 2022-23 Consultation \(p18\)](#)

### **Section Three: Business Plan and Budget**

39. As indicated above, we appreciate the challenges LeO is facing in the employment market and its difficulties in attracting the right candidates for the jobs available. However, LeO must do more to retain high performing staff, by changes to terms and conditions as well as to the culture of the organisation in order to reduce recruitment costs resulting from attrition.
40. We appreciate that the OLC wanted to stabilise the organisation, following years of poor performance, before being able to move forward. LeO received a 13% increase in its budget last year and by March 2022 will have had a year in which to implement its new approach. It says it will consider more radical options to improve its performance. The legal sector is entitled to see some evidence of delivery on that promise.
41. The budget options indicated in the paper suggest an increase between 4.5% (lowest) and to 6.5% (highest) above last year's budget increase. The profession is still struggling with the economic challenges of the pandemic and therefore LeO needs to consider what costs savings it can make through greater efficiencies. According to its figures it has helped 30% more customers with 16-20% less resources and there has been a 10% reduction in investigation times in this business year. This is a positive indication of what a focus on efficiencies can bring (and we suggest further possibilities in paragraph 27 above). LeO should also consider perhaps putting in place a performance related bonus scheme for its employees so that higher performing staff are rewarded, and underperforming staff may be motivated to perform to higher levels. The legal sector, which funds LeO, cannot be expected to keep paying higher amounts when there appears to be no tangible improvement in service to customers (case closures are 20% lower (mid-year) than predicted) and the backlog of cases has increased to almost 9% above forecast at the mid-year mark.

### **Consultation Questions**

42. Specific questions being asked in the consultation: -

1. *This document is being shared with you following a year of enhanced public accountability. What are your confidence levels in the Legal Ombudsman scheme compared to this time last year?*
  - Our confidence levels in the new leadership team have improved due to regular engagement and greater transparency both directly with LeO as well as via the Advisory & Challenge Group set up by LeO, where relevant stakeholders provide suggestions about improving LeO's performance. This has enabled us to better understand the challenges faced by LeO. We can

see that the leadership team is trying to implement the changes it has indicated.

- However, we remain concerned about the well-intentioned, and in our view, over ambitious forecasts which were adopted in March 2021, by the new team, bearing in mind what was already known to them at the time. For example, LeO was aware that due to the special leave granted to its staff in 2020, a significant amount of annual leave would be carried forward to 2021. In our view this was reasonably foreseeable and should have been taken into account in the forecasts.
- Another example highlighted in our Response to the Business Plan 2021-22 was the over ambitious recruitment proposals put forward in the original plan. Whilst it was good to see that the original plans were scaled down, regrettably even these have not been achieved. We have been informed that LeO is considering recruiting staff from a larger geographical reach with hybrid working and regional hubs to provide support to staff. Whilst this idea appears to be good in principle, particularly hybrid working, LeO has made assumptions about successfully recruiting suitably skilled staff (which has been a challenge this year) and have not provided any detail of how these hubs will work in practice (for example in terms of training and supervision of staff, how quality of service would be monitored and which areas these hubs are likely to be located) nor an indication of the costs involved. Without this information, it is difficult to assess whether any of these measures will be viable in practice.

2. *Specificity is key for the credibility of the Business Plan but it is also important to avoid ‘information overload’. What would you like to see more information or detail on in the final Business Plan issued in the New Year?*

- In terms of the ‘radical options’ identified in the consultation paper; has LeO considered the timeframes to bring about the changes? Legislative changes take time and if LeO wants to pursue this it must do so swiftly.
- Has LeO considered the possible challenges and risks /benefits for each of the options outlined in Section three and if the benefits outweigh risks how the challenges will be addressed?
- Going forward, how will LeO drive through change as a cultural mindset, given the embedded problems which it has so far been unable to resolve?

3. *The Legal Ombudsman must avoid over-promising and under-delivering. To this end this document seeks to openly set out the different confidence levels in the impact of what is being proposed. Is this a helpful approach to adopt?*

- Yes, the approach is generally welcome.
- Perhaps, in the future, LeO could consider setting out what it considers to be an optimum performance for its investigators, in terms of closures, and what it would consider low or high in each complexity category?

- It is still helpful to know the cost of each case and complexity level.
4. *Historically there has been an emphasis on plans to tackle the size of the pre-assessment pool but there are better and more customer-centred ways of measuring sustainable acceptable performance. Should the Legal Ombudsman place more emphasis on individual customer experience, the value for money the service provides, the wider impact of the scheme or other measures?*
- We believe that the size of the PAP is an important measure of how LeO is performing and a useful tool to see what progress is being made and it should continue to be reported on. We also consider that the calculation of cost per case is also an important barometer for those funding LeO to indicate whether the service is providing value for money or not, as well as indicating whether any efficiencies made by the organisation are reducing costs.
  - The length of time of time it takes to deal with cases of different complexity is also helpful to gauge the customer journey as is the customer satisfaction information of both complainants and service providers.
5. *What are your views about the proposed budget for 22/23? If you disagree with the proposed budget, what elements of the Business Plan should be changed in order to address this?*
- We have already provided our views about the budget and Business plan above and at paragraph 39 to 41.
  - If LeO decides to pursue some or all of the '*radical options*' more swiftly, such as outsourcing and demand management, we would question the need to spend money on recruiting additional staff who may later be surplus to requirements and may be more costly in the end. If the PAP can be substantially reduced through implementing outsourcing and new cases reduced via stricter demand management criteria or early resolution processes, then LeO will have substantially fewer cases to investigate and will require considerably less investigators. Any surges in demand can also be serviced through fixed cost outsourcing meaning it will gain a tighter control on the reigns but still having flexibility with much lower costs. We believe outsourcing could reduce costs by half.
  - Our members want to see more for less. The culture of wastefulness should by now be a thing of the past and therefore the plan going forward must focus on driving costs down by removing the frivolous and unreasonable matters at an earlier stage.
6. *Are there further measures that LeO should consider implementing in order to improve its performance?*
- Our suggestions have been outlined above.