



# **Legal Ombudsman Business Plan 2022-23**

A Response by  
CILEX (The Chartered Institute of Legal Executives)

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## 1. Introduction

- 1.1. CILEX (The Chartered Institute of Legal Executives) is one of the three main professional bodies covering the legal profession in England and Wales. The 20,000-strong membership is made up of CILEX Lawyers, paralegals and other legal professionals. Our members are judges, advocates, partners in law firms and specialist lawyers working across every aspect of the law.
- 1.2. CILEX welcomes the opportunity to comment on the Legal Ombudsman (LeO) Business Plan and Budget 2022-2023, and appreciates the efforts undertaken by LeO to provide visibility of action and progress made against the first six months of 2021-2022 thus far.

## 2. 2021/22 Mid-Year Review

- 2.1. As highlighted throughout the consultation, there are a number of initial assumptions that have led to performance below forecasted levels, and CILEX is particularly sensitive to the practical barriers faced in response to Priority One; the bulk of core spend that was allocated as part of LeO's multi-year plan. With clear recruitment and attrition issues, the figures in the Business Plan highlight that for certain roles there has been the same number of outgoing members of staff (if not more) than incoming<sup>1</sup>; running contrary to the anticipated hopes that an additional spend of £10.82 million would realise improvements in the rebuilding of human resource.<sup>2</sup>
- 2.2. In addressing these recruitment barriers, CILEX recognises LeO's efforts to diversify recruitment practices in the hopes of generating new interest from prospective candidates. However, solutions such as outsourcing, do need to be alive to the additional costs and overhead expenditure that would be generated in turn.
  - 2.2.1. As articulated in our initial response to the 2021-2022 Business Plan proposals, CILEX continues to hold reservations about the ambiguity surrounding proposed budget plans and the extent to which additional unforeseen funding may be required in due course. Solutions such as outsourcing, and even technological investments under Priority Two (which CILEX previously cautioned are likely to be exponential in nature) suggest that the multi-year approach will risk giving rise to escalating costs.
  - 2.2.2. Understanding the long-term investment necessary for these solutions, and adjusting forecasting to better account for assumptions made, will be imperative to securing trust in the sector and confidence levels around the Business Plan's likelihood of success. The impact of COVID-19 and subsequent recovery plans remain as uncertain as ever<sup>3</sup> and the profession continues to face unprecedented financial risk as a result. Indeed, recruitment and attrition levels are equally at breaking point in many pockets of the profession; and LeO must be sensitive to the implications that any budget increases at this time, would have in

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<sup>1</sup> Legal Ombudsman, *Business Plan 2022-2023 Consultation*, (2021) p.8.

<sup>2</sup> CILEX's initial response to the 2021-2022 budget had queried "how LeO will manage a recruitment exercise on a scale they never before undertaken." This question still persists as an ongoing challenge in need of greater attention.

<sup>3</sup> With new variants (i.e.: Omnicron) having surfaced at the time of writing.

exacerbating these issues further down the line as the bedrock of legal service provision becomes more fragile and precarious than ever.

- 2.3. It is nonetheless good to see LeO seeking to understand the reasons for the departure of outgoing staff (such as performance variation between top and lesser performing members of staff) in combating attrition. It would be beneficial for this data to be actively used in informing internal strategy and operations delivery under Priority One, and in forming an effective crisis management plan in respect of staffing.
- 2.3.1. CILEX had previously cautioned that success under this priority would rely on greater detail for strategies in improving wider working practices; even more so now, as LeO struggles with unanticipated barriers (loss of key staff and the impact of COVID) in trying to address previous shortcomings. A greater specific focus on staffing shall therefore be necessary beyond the regular business planning cycle, and whilst some of this detail is now present, it is still unclear when key deliverables are expected to materialise or how they are expected to be achieved.<sup>4</sup>

### 3. 2022/23 Business Plan and Budget

- 3.1. CILEX would like to reiterate that the correct starting point for the Business Plan and budget in our view is to recognise the growing need to improve efficiency and effectiveness of complaints handling in light of mounting complaint backlogs and with the continued uncertainty that COVID-19 brings. Therein, we recognise the rationale behind increased investment within staffing and resourcing as a short-term measure for *addressing* these issues, however, are yet to be convinced that the priorities outlined within the Business Plan shall amount to sustainable measures for *resolving* these issues longer-term.
  - 3.1.1. Once again, the notion of outsourcing *“any aspect of the operational process to a third-party external complaint resolution provider”*<sup>5</sup> provides only short-term relief and would bring with it wider concerns if adopted as standard business practice longer-term (as the operational activities of LeO become subject to private sector delivery).
  - 3.1.2. This begs the additional question of the extent to which LeO will be actually able to *“support wider sector work on areas such as...redress for the unregulated sector”*<sup>6</sup> and whether it would be best placed to accommodate suggestions advocated by the Ministry of Justice and Legal Services Board for Ombudsman services to be extended beyond the existing cohort of regulated providers. Should these reforms come to fruition, operational demand on LeO’s services will necessarily increase; reiterating the need for the Business Plan to deliver transformational change that can future-proof more efficient and effective complaints handling.
- 3.2. One longer-term solution that LeO points to in this regard is the need to re-evaluate internal rules for proportionality to enable early closure or dismissal of cases on the basis that it would be disproportionate for a full investigation to be carried out given the probable outcome. CILEX cautions that in delivering this solution LeO remains

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<sup>4</sup> For example, the ambition for 2022-2023 to *“develop a wider attraction and retention strategy for the whole business”* points to an objective, but with little detail as to the actions needed in achieving this aim.

<sup>5</sup> See footnote 1, p.28.

<sup>6</sup> See footnote 1, p.30.

sensitive to the need to maintain this threshold at a reasonable level so as to ensure that Ombudsman services remain open and accessible to those in need. We would therefore prefer the approach being worked on to “define a set of financial thresholds and objective criteria which, if not met, would enable an ombudsman to consider dismissing a case”<sup>7</sup>; ensuring that the validity of the case is considered first and foremost with the principle of proportionality in mind. This would provide a more objective process of assessment to ensure fair and transparent complaints handling whilst still allowing for smarter response to better prioritise distribution of resources.

3.2.1. The use of technology in aiding effective complaint management should also be considered within this, providing an ability to more efficiently and transparently categorise complaint types and allocate handling between members of staff (particularly against a workforce that is witnessing a 50/50 split between experienced and new members of staff).

3.3. In looking to the budget and any increases therein, the Business Plan acknowledges “the risk of not being able to spend next year’s budget if the Legal Ombudsman cannot recruit the right people”<sup>8</sup>; a challenge that LeO has already faced within the first six-month review of 2021/22 with recruitment drives unable to achieve desired outcomes. CILEX would therefore expect to see transparency from LeO on whether there has been any overflow accrued from the 2021/2022 budget and how this might be reinvested into forecasted figures.

3.3.1. As noted above, we continue to voice serious concerns around the multi-year plans susceptibility to increased budget beyond forecast and the impacts that this would have on the legal profession at such a financially precarious time. **CILEX therefore strongly disagrees with Option B set out within the Business Plan and Budget for a further 1.3% increase.**

## 4. Looking Forward: 2023/24

4.1. Indeed, in reaching the proposed budget levels (Option A and B) and future planned budgets, CILEX is keen to understand the extent to which LeO’s forecasting has taken account of emerging trends. This includes:

4.1.1. Directly relevant to Priority 3: the increase in complaints handling amongst the profession with more and more first tier complaints dealt with in-house.<sup>9</sup> CILEX is pleased to see firms fulfilling their role within complaints management and would be interested to know how the subsequent benefits this provides to LeO in relieving complaint volumes has been factored in.

4.1.2. Operational challenges: LeO notes that some of the assumptions which have resulted in slower uptake than expected include the wider implications of COVID-19 on staff, such as the impact of school closures.<sup>10</sup> This has resulted in progress below forecasted levels. In the interests of organisational learning and to avoid the same mistakes, CILEX would be interested to know the extent to which LeO

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<sup>7</sup> See footnote 1, p.27.

<sup>8</sup> See footnote 1, p.35.

<sup>9</sup> Solicitors Regulation Authority, Research Findings (July 2019) [ <https://www.sra.org.uk/sra/how-we-work/reports/first-tier-complaints-report> ]: the findings highlighted that 81% of First Tier Complaints had been dealt with in-house in 2018 as compared with only 72% in 2012.

<sup>10</sup> See footnote 1, p.20.

has implemented enhanced COVID response measures (such as hybrid working, annual leave policies, sickness absence, mental health and wellbeing) and how these have been accommodated into future forecasts.

- 4.2. As LeO notes, future forecasting will require an assessment of the ways in which further efficiencies created through the delivery of Priority Two can hope to reduce overheads in the other priority areas (notably, Priority One). CILEX emphasised at the inception of the multi-year plan that this would not be a “*linear*”<sup>11</sup> process but would require all three priorities to be considered as a system whole. Greater strategic thinking is still required around the interdependencies between these priorities and how LeO expects to deliver elements of each in realising desired outputs more quickly. For example, under each priority heading, which focus would LeO categorise as ‘most urgent’ or as a ‘quick win’? Which of the focuses are most resource intensive or high risk? Establishing proxies and indicators such as these would help to better assess and navigate all three priorities in unison as parallel workstreams for delivery as opposed to isolated parts.

## 5. Conclusion

- 5.1. CILEX stresses the importance of greater clarity and foresight around the multi-year plan, enabling the market to better understand, navigate and respond to the changes envisaged by LeO for improving the ombudsman service. Reflections on progress for 2021-22 thus far are welcome but highlight the need for LeO to change its approach to strategic and operational delivery against business plan priorities, and in its forecasting models (particularly around budgetary requirements).
- 5.2. We welcome LeO’s increased transparency and communication with the sector and hope to see greater detail on specific action plans and timelines against the business plan priorities; an action that can help build greater trust in LeO’s ability to realise much-needed change. Express acknowledgement and sensitivity by LeO of the financial and operational challenges that the wider sector is facing will also be critical to contextualising these priorities against present-day realities, allowing for more accurate forecasting and future planning.

### For further details

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<sup>11</sup> See footnote 1, p.14.