



# **OLC Business Plan & Budget 2021-22 Consultation Paper**

Law Society Response

January 2021



# OLC Business Plan & Budget 2021-22

## A response from the Law Society of England and Wales

### Introduction

1. The Law Society is the professional body for solicitors in England and Wales. We welcome the opportunity to respond to the Office of Legal Complaints (OLC) consultation on its Business Plan and Budget for the Legal Ombudsman (LeO) service for 2021-22<sup>1</sup>.
2. We appreciate the openness of the consultation paper regarding LeO's performance over the past year, which the OLC Chair attributes to the impact of Covid-19, the constraints of the current budget and significant changes to the leadership structure. We recognise that LeO, like all organisations, is operating in a very challenging environment. We also recognise the well-intentioned and ambitious plans to get LeO back on track, which include reducing its backlog, closing more complaints in a timely manner, developing innovative ways to deliver its service, engaging with stakeholders and providing feedback to the profession. We note, however, that poor performance levels, attributable to management and operational issues, pre-existed the pandemic. In this context, trying to deliver all of these priorities at the same time would be difficult, and LeO's fundamental priority must be to resolve complaints for its service users in a timely manner. Once it does this efficiently and effectively the other priorities can follow.
3. We share LeO's commitment to improve standards in the sector in order to reduce the number of consumer complaints. This is a matter which we have prioritised in our business plan. Over the last eighteen months, we have been collaborating with LeO to look at ways in which we can better support our members to reduce or resolve complaints at first tier, with the effect that fewer complaints need to be investigated by LeO. We hope to continue this work with the new leadership team at LeO going forward.
4. However, another of our priorities is to support our members' businesses in this difficult economic climate. For this reason, we reduced our own budget this year. The OLC is requesting a substantial increase in its budget, similar to its proposal last year for a 21% increase, which the Law Society opposed in February 2020 (see our Response to the OLC's Corporate Strategy 2020-23 consultation<sup>2</sup>).
5. The OLC is suggesting that a substantial investment in resources will deliver the much greater number of closures to which LeO aspires. However, in our opinion, it has not provided sufficient evidence to support the significant increase and we are not able to support the proposed budget increase. We believe that there are a number of steps LeO can take to reduce its budget request. First, prioritisation should reduce the demand for resources. We explain below that LeO should be focusing on the first and most important priority. Second, we believe that its new leadership team should carry out a thorough review in the new year to see what efficiencies and savings can be made. Following this review, it should look at part funding its budget from alternative sources, bearing in mind the application comes at a very challenging time for the profession, with many firms in the sector encountering financial difficulties and making staff redundant due to the COVID-19 pandemic. We also recommend that, before undertaking an intensive recruitment drive (and incurring associated costs), LeO should focus on addressing its human resources issues, without which recruitment may be unrealistic and a poor investment.

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<sup>1</sup> [OLC Business Plan & Budget Consultation 2021/22](#)

<sup>2</sup> [Law Society Response to the OLC Corporate Strategy 2020/23](#)

6. We set out detailed comments on the Business Plan and Budget below.

### Priorities

7. The Business Plan identifies three main priorities, which the OLC see as being of parallel importance. However, we view the first and most important priority is for LeO to resolve complaints for its service users in a timely manner. The backlog of cases in the pre-assessment pool (PAP), which has dramatically increased over the past few months, needs to be reduced. However, we believe greater efficiencies in performance could be realised without the necessity of the significant budget increase being proposed, if the following were to occur:
- cultural and staffing issues within the organisation are addressed and resolved;
  - further improvements to LeO's existing processes are made; and
  - time is allowed for other relatively newer processes to bed in.

### Priority 1: Maintaining stable operational delivery and reduce wait times at pre-assessment by the end of the strategy period (2023).

8. We agree that LeO should prioritise this matter. However, we believe LeO should be clearer about the causes of its current poor performance, to generate confidence in its proposed solutions, and about the data underpinning its assessments and projections.

### Understanding the causes of poor performance

9. We appreciate that LeO, like all organisations, has been impacted by the Covid-19 pandemic. For instance, disruption has been caused to LeO's service levels due to complainants not being available, or service providers being closed or unable to respond. This will have impacted on some open investigations which were necessarily and reasonably suspended. It is good to note that a relatively small number of open investigations appear to have been suspended.
10. However, we are concerned about the extent to which case closures have deteriorated - the indicative figure for closures is only 4,860 for the year 2020/21. We are also concerned about the steep increase in the backlog of cases waiting in the PAP. We understand that some impact would have been caused to cases in the PAP, however, it is unclear how the backlog has increased so rapidly and to such high levels - from 2,481 in March 2020 to a forecasted total of 5,000 by March 2021<sup>3</sup>. This will equate to over a 100 percent increase within a year, with wait times almost doubling. All businesses have had to adapt to new ways of working and to recover as quickly and as fully as possible.
11. In the OLC Annual Report & Accounts for the year ending 31 March 2020<sup>4</sup>, Ms Marsh, former LeO Chief Ombudsman and Chief Executive, stated, '*We transitioned easily to home working, with no cessation of service, but the reduction in staff availability and the impact on service providers means that the progress made through the year is becoming steadily eroded.*' This shows that LeO was in the fortuitous position, unlike many service providers, of its staff being able to work from home. Despite this, the backlog of cases has seen a steep rise and the rate of case closures has significantly diminished.

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<sup>3</sup> [OLC Business Plan & Budget Consultation 2021/22 \(p17\)](#)

<sup>4</sup> [OLC Annual Report ending 31 March 2020 \(p5\)](#)

12. As such, there are questions as to how much of LeO's current difficulties are as a direct consequence of the effects of the pandemic, how much are as a result of its management and operational issues, what effective steps the organisation took to mitigate performance issues and whether staff could have been more efficiently deployed.
13. A LeO report to the OLC board in June 2020 states that "levels of output have reduced across all investigator cohorts", with reduced availability due to Covid-related caring responsibilities reported by 20-25 investigators every week<sup>5</sup>. A board paper on performance in July reported that '*Caring responsibilities continued to affect both the investigator and Team Leader cohorts. In June, on average 25% of investigators each week claimed some degree of special leave for lost capacity as a direct result of caring responsibilities, totalling more than 1,250 lost investigator hours in a month. June also saw on average 6 Team Leaders per week reporting lost hours totalling approximately 200 hrs in [sic] month*<sup>6</sup>.
14. We completely understand that organisations have needed to operate flexibly and will continue to do so for some time to come. We understand from LeO that it was following MOJ guidance in authorising special leave. However, for all organisations, it is the leadership's responsibility to develop a plan which effectively supports the wellbeing of the staff team whilst continuing to meet the needs of service-users. It is unclear from the information available that this was effectively achieved. Considering the financial support that the government has given to other sectors in the form of furlough payments, LeO should consider if there is scope to obtain Covid-related financial assistance towards part of its budget application to recoup additional costs incurred as a consequence of following the guidance. Many other organisations adapted and continued to deliver services effectively to the public. It seems likely that the approach taken will continue to impact performance irrespective of the plans and budget.
15. We are aware that low performance levels existed before the pandemic. In the OLC's Annual Report & Accounts for the year ending 31 March 2020<sup>7</sup>, the former Chair, Wanda Goldwag, acknowledged that even before the Covid crisis, '*We recognise that we have not achieved the overall performance we were striving for, and particularly that delays faced by some complainants and service providers have fallen short of the standard of service we want to offer*'. Whilst LeO saw a slight improvement in performance due to the processes it had introduced, the backlog at the end of March 2020 was 2,481. The number of cases closed for the year ending March 2020 was 6,384. This means that the OLC still did not come close to achieving the target of 7,200 indicated in its Corporate Strategy 2023<sup>8</sup>. It is imperative that the LeO should analyse the cause of these pre-existing performance issues, in order to build confidence that it has an effective plan to tackle these. If, as we understand, some of this is owing to operational issues such as the quality of leadership, attrition rates, performance management, etc. it is important that all stakeholders have confidence that these underlying problems have been adequately addressed before a large recruitment drive of the type envisaged is undertaken.

## Transparent Data

16. The Business Plan states that this application is an improvement on the previous budget application on the basis that this one is constructed on better information and better

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<sup>5</sup> [Performance and Covid Update Paper June 2020](#)

<sup>6</sup> [OLC -Performance and Covid -19 Paper July 2020](#)

<sup>7</sup> [OLC Annual Report ending 31 March 2020 \(p1\)](#)

<sup>8</sup> [OLC Corporate Strategy 2020-23 \(p8\)](#)

forecasting. Appendix C, Table A sets out comparisons of LeO's delivery against funding. However, the information in the Business Plan is inconsistent with figures the OLC has previously published as well as within the current document itself. We have set out some the inconsistencies in the table below. Without reliable, coherent and consistent figures it is difficult to make sense of the comparisons.

**Table indicating inconsistencies in the OLC information**

Year	Information in the OLC Business Plan 2021/22 (page 6)	Information in the OLC Business Plan 2021/22 (page 19)	Information in the OLC Annual Review & Accounts up to 31.3.2020 (page 21)		Unit cost x Number of cases closed
Total Net OLC Expenditure (£mn)			Budgeted	Actual*	
2017/2018	Not indicated	11,800	11.80	10.94	£1787 x 6125
2018/2019	11,899	12,970	12.79	11.95	£1926 x 6206
2019/2020	12,298	12,298	12.52	12.30	£1926 x 6384

\*These figures have been included as they appear to be correct- in terms of the figures given for the unit costs.

17. The Plan estimates that, without the significant budgetary increment proposed, complaint resolutions would be limited to 6,416 in 2021/22 and 6,634 in 2022/23. However, the OLC goes on to forecast that an increase in budget will lead to 7,135 closures for the year 2021/22 and 9,571 for 2022/23. These figures are very ambitious, however there is no explanation as to how they have been calculated and there is no evidence to support the predicted outcomes. The figures setting out the per unit cost of complaint handling in Appendix C suggest that an increase in resources does not necessarily equate to huge levels of closures. It would also be helpful to understand what proportion of the predicted figure consists of new complaints and what proportion relates to the backlog<sup>9</sup>. It is also unclear how the figures for timeliness of investigations have been worked out.

#### **Analysis of OLC costs and capacity, 2018-23 (actual and projected) \***

	2017/18 (actual)**	2018/19 (actual)	2019/20 (actual)	2020/21 (indicative)	2021/22 (indicative)	2022/23 (indicative)
<b>Cases concluded</b>						
Number of cases concluded	6,125	6,206	6,384	4,860	7,135	9,571
Difference from previous year		+81	+178	-1,524	+2,275	+2,436
Percentage change from previous year (%)		+1.32	+2.87	-23.87	+46.81	+34.14
Percentage change in cases concluded since 2019/20 (%)				-23.87	+11.76	+49.92
<b>Customers waiting</b>						
Number of customers waiting		3,217	2,481	4,968	4,200	1,245
Difference from previous year			-736	+2,487	-768	-2,955
Percentage change from previous year (%)			-22.88	+100.24	-15.46	-70.36
<b>Expenditure</b>						
Total Net OLC expenditure (£)	10,927,000	11,899,000	12,298,000	12,808,000	15,260,000	16,163,000

<sup>9</sup> [OLC Business Plan & Budget Consultation 2021/22 \(p5\)](#)

Percentage change from previous year (%)		+8.90	+3.35	+4.15	+19.14	+5.92
Percentage change from 2019/20 budget (%)				+4.15	+24.09	+31.43
Cost per case concluded (£)	1,784	1,917	1,926	2,635	2,139	1,689
Percentage change in cost per case concluded from 2019/20 (%)				+36.81	+11.06	-12.31

\*Based on figures from the table on page 6 of the Business Plan and Budget Consultation 2021/22

\*\*2017/18 figures from the table on page 8 of the OLC Corporate Strategy Consultation 2020/2023

18. The above figures indicate that with the proposed budget increase the OLC predicts:

- a 46.81% increase in the number of case closures within one year.
- a further 34.14% increase by 2023, almost doubling the number of case closures to those indicated for the year ending 2021.
- a 15% reduction in the PAP by 2022 and a 70% reduction by 2023.

However, without greater information, it is difficult to understand how these figures have been modelled and therefore there is a question on how realistic this is to achieve.

**Priority 2: Developing innovative ways to deliver the service more efficiently and to keep pace with evolving legal sector and consumer expectations.**

19. The Business Plan proposes piloting alternative delivery approaches and indicates that two approaches are currently being considered: the standardisation of information requests and an adjudication model for lower complexity work. It also suggests that it intends to build on exploratory work around implementing technology which would support an effective and timely investigation process and consumer expectations of service delivery.

20. More detail about what will be involved, how much impact this may have on the investigation process and what costs/benefits analysis has been carried out to scope out these projects would be welcome. Furthermore, it would also be helpful to better understand what precautions LeO would take to avoid biases in the texts used for machine learning adversely affecting its customers. The document suggests that these projects have already started, but it is unclear what stage they have reached. It would be helpful to understand if they involve further investment in IT systems and infrastructure and, if so, what proportion of the increased budget is it envisaged that this would require?

21. The profession and the public deserve a service which is effective, and as long as standards are maintained or improved, we would broadly encourage innovation. We hope that more details of the beneficial impacts of these projects can be provided to enable us to reconsider giving our full support.

**Priority 3: Increasing the impact of casework**

22. 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 learning and feedback if it deals adequately with the complaints raised with it in the first place. Consequently, as we said at the outset of this response, LeO's service issues and backlog should be the immediate priority.

23. Once these issues are on track, LeO can then focus on other priorities such as providing learning and feedback. We would be pleased to continue our work with LeO in supporting our members to prevent complaints from arising or helping them to resolve complaints at first tier more efficiently.
24. LeO has previously acknowledged that firms are getting better at resolving complaints in-house and this is supported by the SRA's First Tier Complaints Report of July 2020<sup>10</sup> which concluded that whilst firms are receiving more service complaints, they were resolving a higher proportion at first tier. Eighty-one percent were resolved in-house in 2018. We would be interested to know whether that improvement has been factored in on LeO's projected budget.

## Budget

25. The Business Plan sets out ambitious goals attached to a significant budget increase. However, we have not seen evidence, either historically or within the Plan, to substantiate that more investment will lead to the level of closures indicated. For example, in 2018/19 LeO received an 8.9% increase in its budget which only resulted in an additional 81 cases being closed compared to the number the previous year.
26. The proposed investment in staff resources indicated for 2021/2022 is a particular concern. The Plan lacks essential information about the scale and nature of the staff resources that the OLC is proposing to deploy, as well as being short on detail on the costs and functions of those staff. It would be helpful for LeO to publish a detailed cost assessment of its proposed workstreams, given the high value budgetary increase proposed for the forthcoming year (£15.26m) and the following year (£16.16m).
27. The Plan proposes that £10.82m would be invested in recruiting additional operational staff and in training and developing managers. As stated above, information has not been provided about the scale and nature of the staff resources that the OLC is proposing to deploy, save that it has earmarked £10.82m of the proposed budget for 4 teams. This is a substantial sum and we are concerned that LeO has neither the experience of recruiting at the levels indicated or the capacity (in terms of experienced staff to train new staff without impacting its performance further) for such a large-scale recruitment drive within the time scale indicated.
28. Furthermore, this significant sum would be a poor investment if LeO cannot retain its staff. In February 2020, we raised concerns about high sickness rates and low staff morale at LeO leading to high staff turnover<sup>11</sup>. In March 2020, the OLC's People Plan acknowledged that *'Whilst significant investment has been made in systems and processes over recent years the reality is that the current underperformance is, in large part, attributable to issues with the experience and stability of our workforce. This is true overall but is most significant in our operations teams and particularly in our investigators who manage much of the complaint activity on behalf of our customers.'* It then goes on to say that *'Attrition levels are high (22%) and have been growing. Investigator attrition is nearer 30%<sup>12</sup>.'* Whilst we understand that the level of staff turnover has decreased over the past few months, this is likely to be mainly due to impact of the Covid-19 crisis with less opportunities for changing jobs.

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<sup>10</sup> [SRA First Tier Complaints Report](#)

<sup>11</sup> [Law Society Response to the OLC Corporate Strategy 2020/23](#)

<sup>12</sup> [OLC People Plan \(p1\)](#)

29. The People Plan identifies a number of issues including LeO's induction process being inadequate to provide operational staff with the skills they need to do their job. It also states that there has been a necessity for HR intervention due to poor performance which has accounted for 46% of employee turnover<sup>13</sup>. The Plan, in addition, identifies LeO's employer brand as being negative on platforms such as GlassDoor.
30. Bearing in mind the concerns outlined above, LeO should focus on addressing and improving its staff retention rates before ambitious recruitment strategies are rolled out. Better staff retention would also reduce the costs of recruitment and training. LeO previously stated that it would be recruiting from a different profile to improve staff retention. It is not clear whether this policy has been implemented or what it entails.
31. It is not entirely clear on what is being proposed under Priority 2 and what impact, in terms of resource and costs savings, the proposed '*innovative ways*' of working will deliver. There is no indication of how the proposed budget allocation of £0.15m will be spent, or the time frames of any pilots, or how they would run. Accordingly, it is difficult to say whether this is an appropriate priority, at this time, for the OLC or not. We would welcome greater elaboration on this part of the Plan and then reconsider our position on this.
32. Under Priority 3, apart from indicating that £0.43mn would be spent on feedback to the sector, the Plan indicates allocating £3.86m on '*Corporate functions, transformation and business support*'. It is unclear what is being proposed under this heading and how monies will be allocated. We note that the horizon scanning part of the Business Plan refers to Professor Mayson's recommendations to extend LeO's remit to cover customers of unregulated providers. It would be helpful to understand if any part of the budget under this heading is being earmarked to prepare for the possibility that LeO's remit could expand in this way, and if so, how much has been reserved and under what section (for both 2021/22 and 2022/23 budget)? Is any part of the expenditure earmarked for any programmes or for implementing technology, for example? More information would be welcomed.

## Engagement

33. As stated above, we have been working more closely with LeO over a period of time to better understand its processes and suggest improvements. For example, we suggested that LeO provide early notification to service providers when a complaint is received as opposed to when it is sent to an investigator. We explained that this awareness would result in less delays as firms would not archive their files and they would be in a better position to respond to LeO's communications quickly. LeO introduced its 'Nudge' process in January 2020 which informs firms that a complaint has been received and provides firms the opportunity to resolve a complaint before it is transferred for investigation. Following a review in October, LeO estimates that going forward around 5% of cases going into the PAP will be closed as a result of this process. This is of huge benefit to both consumers and legal services' providers.
34. We agree that it would be useful for regulators and representative bodies to be able to access up-to-date complaints data for the profession from which lessons can be learnt. For example, LeO's Overview of annual complaints data 2019/20 is both informative and useful<sup>14</sup>. We believe that our collaborative working can lead to greater improvements to the way in which service providers handle complaints which could lead to reduced numbers of complaints being escalated to LeO.

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<sup>13</sup> [OLC People Plan \(p6\)](#)

<sup>14</sup> [Overview of annual complaints data 2019/20](#)



35. We would welcome, for example, a mandatory requirement for all new start-up legal businesses to be exposed to the very helpful information and guidance about complaints handling on LeO's website.

#### **Appendix B: Horizon scanning**

36. The Plan has identified a number of issues which could impact the profession over the coming months. Additional noteworthy ones includes the impact of Brexit on the profession, potentially a greater number of complaints due to increased transaction volumes as a result of the SDLT holiday, current market instability (which may persist into the near-term and medium term) and the introduction of an economic crime levy in 2022/23 on many law firms.

#### **Appendix C: Table B**

37. LeO compares itself to other ombudsman services, such as the Financial Ombudsman's Service or Local Government and Social Care Ombudsman. However, these are not realistic comparators as the industries and numbers of entities regulated, together with the resources available to the named regulators, are very diverse and do not make good comparisons.

#### **Appendix D: Measuring performance**

38. A revised suite of Key Performance Indicators (KPIs) is set out under this section. We note that KPIs have been set very low with only 65% of low complexity cases to be resolved in 275 days, 85% of medium complexity cases to be resolved in 326 days and high complexity cases taking well over a year.

39. We are concerned that there is no target for the cost per case and believe that this is an essential indicator as to whether the organisation is delivering value for money to its funders. It is an obvious means of measuring performance against organisational goals and objectives and should be reinstated.

40. To address our concerns about the rate of decline in LeO's performance, we believe that greater reporting and accountability of performance is needed. Perhaps quarterly monitoring of progress against KPIs ought to be considered by the LSB and MOJ and shared with stakeholders.

#### **Possible Alternative Funding Options**

41. The Plan states that the OLC considered alternative routes to funding the proposed significant budget. It states that 'a standstill budget', meaning an inflationary budget, would lead to a further deterioration in customer wait times and place a limit on its learning and insight work. In the same paragraph it indicates that if capacity is increased quickly there would be risks around the affordability by the legal sector given the prevailing economic conditions, as well as carrying '*some additional risk in relation to stability of operational delivery*'. We are concerned about the potential risks inferred but not identified in the Plan itself and would appreciate more information on this.

42. We understand that the OLC tried to access its reserves but that this request was declined by the MOJ. It then recently applied for an in-year budget increase of 2.7% (£344,315) which the LSB approved. Whilst agreeing to this, the LSB said that it was mindful of the

financial pressures facing the sector due to Covid-19. The LSB however went on to say that it shared the OLC's frustration that *'it was unable to access its reserves to fund the sum requested. The Board noted that OLC's total reserves greatly exceed the level of funds that would be required to wind-down the organisation. It is imperative that together we will continue to explore this issue with government officials.'*<sup>15</sup>

43. In this respect it is worth noting that the Financial Ombudsman Service (FOS) recently stated that it will absorb additional costs for its service for the forthcoming year by applying its reserves<sup>16</sup>. We believe that the OLC should consider a further approach to the MOJ, with the support of the LSB, for the release of its reserves to fund part of its budget.
44. A further perhaps additional solution was outlined above, that the OLC consider seeking a payment from the government for Covid-related financial assistance.

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<sup>15</sup> [Letter from the LSB to the OLC \(24.11.20\)](#)

<sup>16</sup> [FOS Budget 2020/21](#)