



OLC Corporate Strategy 2020-23 Consultation Paper
Law Society Response
February 2020



OLC Corporate Strategy 2020-23

A response from the Law Society of England and Wales

Introduction

1. The Law Society welcomes the opportunity to respond to the Office of Legal Complaints (OLC) consultation on its proposed Corporate Strategy for 2020-23 and its business plan for 2020-21.
2. We agree with the amended wording of both the OLC's mission and vision statements. Public trust in the legal system is crucial, and the vision presents an opportunity for the OLC to 'build genuine trust and public confidence in legal services in England & Wales'.
3. While we are pleased to note that the Legal Ombudsman (LeO) has made good progress with its main corporate objectives for 2017-2020 in relation to the modernisation programme, we remain concerned about its overall performance. The OLC, itself, acknowledges in the Corporate Strategy paper that '*we have not achieved the overall performance we were striving for. We recognise that the delays faced by some complainants and service providers have not represented the standard of service we want to offer.*'¹
4. We would welcome more comprehensive information about LeO's performance to allow interested stakeholders, including the Law Society, to provide more informed views on its response to ongoing performance issues. For example, it would be helpful if LeO would publish clear information regarding: the status of the backlog; the exact reasons for, nature of, and numbers of the various resources it is seeking to deploy; the cost of these resources; and the potential benefits both to legal service users and providers. In particular, we would expect LeO to publish detailed cost assessments of its proposed workstreams, given the proposal of a significant (20 per cent) increase to its annual budget.
5. We set out below detailed comments under each of the questions.

Question 1 Have we considered all of the external developments that may affect our operations over the lifetime of this strategy? If not, what else should we take account of?

Horizon Scanning

6. Horizon scanning is an important tool for capturing and monitoring change as well as anticipating future behaviour and developing strategies to respond to anticipated challenges and opportunities. The OLC strategy paper has captured several of the economic, social, political and legal uncertainties which the solicitors' profession faces, including: Brexit; regulatory changes, such as the SRA Standards and Regulations (StaRs); the new Solicitors Qualifying Examinations (SQE); and proposed new legislation, amongst others.
7. We believe the following external developments, although not all within LeO's remit, may also need to be taken in to account as they could have a significant impact on service users, the profession, wider public and the state of the legal system:

¹ [OLC Corporate Strategy 2020-23 \(p3\)](#)

- since 25 November 2019 solicitors have been permitted to work as freelancers or give advice to clients from unregulated entities. While freelance solicitors are within the regulatory remit of LeO, unregulated entities are not. This could lead to complexity in complaint handling and place extra pressures on LeO,
- the possibility of non-European firms entering the market as Brexit comes in to force,
- increasing use of technology which provides legal services to clients unmediated by qualified professionals, may increasingly raise questions of accountability,
- the Crown Prosecution Service anticipates an increase in the number of criminal cases which could lead to more complaints, due to the nature of that work,
- the closure of the Solicitors Indemnity Fund (SIF)². After 30 September 2020 SIF will close to new claims. This means that, unless alternative arrangements are made, former principals of firms which closed after 31 August 2000 may be held personally liable for losses arising from previous work,
- further cuts to public legal funding, court closures and increased court fees mean that more members of the public will have difficulties in accessing justice.

Strategy and Business Plan

Question 2 Have we identified the correct strategic areas to focus on in the next three years? If not, what should we be addressing?

- **Objective I - Improving the experience of our service for complainants and service providers while using our expertise to guide and add value to the complaint journey**

Where are we now?

8. We agree that LeO's primary focus should be improving the service experience for *all* of its users. We are pleased to note that LeO has achieved a number of milestones, most notably: changes to its processes in order to reduce delays; the resolution of all of its legacy cases; a reduction in its wait time at the front end (by two thirds in March 2020); the introduction of its Customer Assessment Tool (CAT) as well as implementing processes by which it can obtain better and more efficient management information; and effective data reporting so it can understand how it is processing casework. These are all positive achievements.
9. However, it is difficult to gauge LeO's success without clear facts and figures and more information about issues such as where the delays identified occurred and the previous and current length of such delays. A proper comparison of the status quo ex ante and the current circumstances would help our understanding. A starting point would assist, as it says it has '*Reduced wait time at the front end of our process by half since April 2019, and currently on track to reduce this by two-thirds by March 2020*'³ provides little context without knowing the actual figures.
10. LeO states that the introduction of its effective online CAT '*has provided easier access to our service to over 25,000 people.*'⁴ We would expect that the CAT would make it easier to identify the many cases that are outside LeO's jurisdiction, which ought to result in greater efficiencies and cost-savings, sparing many worker-hours.
11. Some evidence of the efficiencies delivered by this tool and other changes to LeO's business processes for the year ending 31 March 2019 can be found in LeO's Annual

² [Closure of the SIF Fund](#)

³ [OLC Corporate Strategy 2020-23](#)

⁴ [OLC Corporate Strategy 2020-23](#)

report and accounts 2019. This provides that during the financial year, it 'saw the number of complaints that were accepted for investigation reduce to 4,022 from 7,527 in 2017-18'.⁵ This is a reduction of more than 45%. However, a detailed explanation of the specific impact of the CAT which has led to identifying a significant number of cases which fall outside of LeO's jurisdiction compared to previous years would be helpful to evaluate its success.

Looking forward to the next 12 months

12. The consultation paper proposes an increase in the levels of operational staff, (with a concomitant increase in budget), so that customers are not waiting at the front end of LeO's service. This is difficult for us to understand, bearing in mind the following points which suggest that LeO ought now to have more resources to deal with fewer complaints:

- the OLC Corporate Strategy states it has '*Reduced wait time at the front end of our process by half since April 2019, and currently on track to reduce this by two-thirds by March 2020*'⁶,
- LeO's Claims Management jurisdiction has been transferred to the Financial Services Ombudsman,
- LeO's Annual report and accounts 2019 states (see page 9) '*Our front end process is more efficient as a result of changes we made this year, and the overall customer experience has been significantly improved. However, the process change also meant that we had a one-off volume of people waiting at the front end to begin with. Nevertheless, the number of cases accepted for investigation and the number that are waiting, when considered as a whole, provide assurance that the levels of demand for our service remain broadly consistent.*'
- in the Forward to the OLC's Annual report and accounts 2019 it states that '*The OLC made significant progress with its modernisation programme in 2018-19. We closed the programme in April 2019 having successfully implemented our business process, staffing model, IT, telephony, case management system, and estate rationalisation.*'

13. The above-mentioned points do not suggest that more operational staff are needed; indeed, they appear to suggest the opposite.

14. Whilst the OLC predicts a higher number of case closures for 2020/21 (8,460), than previous years it does not explain how such a figure has been calculated. It would be helpful to understand what proportion of the predicted figure consists of new complaints and what proportion relates to the backlog.

15. It says that it will be '*taking a more individualised approach to development of staff through tailored plans to build skills and expertise, in order to enhance quality.*' This commitment would be welcomed if it results in improved performance levels (especially with regard to the main concerns of the profession, namely: delays in investigation and decision-making, firms being given unrealistic time scales to respond to LeO correspondence, inconsistent decisions and a failure to keep service providers informed). However, the OLC needs to

⁵ [OLC's Annual report and accounts 2019](#)

⁶ OLC Corporate Strategy 2020-23 (p6)

set transparent, measurable criteria, which can be used to evaluate progress against, and the eventual outcome of, this objective.

16. The introduction of the new hierarchy of investigators, Level 1 ombudsman and Level 2 ombudsman, was supposed to address quality issues (at least in part) but there is no published assessment on whether this has been successful and whether the proposed new 'tailored plans' will better address quality. There seems little point in bringing in new initiatives without proper analysis of what did and did not work, and the reasons for this.
17. The development of staff is important, however recent reports have stressed high sickness rates and low morale amongst LeO staff leading to high staff turnover⁷. Therefore, LeO should seek to understand this issue and improve staff retention rates as a priority. Better staff retention would reduce the costs of recruitment and training. LeO previously stated that it would be recruiting from a different profile to improve staff retention – has this policy been implemented and to what effect?
18. We note that the OLC has indicated that it aims to explore the benefits of developing its data reporting further, to support caseload management. We presume that this will assist in reducing the backlog in the first 12 months but need to see more detail on how the work will deliver the intended outcomes.
19. The OLC states that it will be '*more robust in dealing with cases where there has been poor service which has had a clear negative impact on the complainant and also refusing cases where it could not add value.*' We presume that there will be some exercise of discretion and it would be helpful to have some transparent criteria around when this will be exercised, how and by whom.
20. The consultation paper states that the OLC will be '*Communicating all stages of its process more clearly, so that complainants and service providers have a better understanding of how to engage with LeO and what to expect from its service.*' This will be positively welcomed by all parties, especially our members who are often unaware that a client has made a complaint to LeO until many months later, when files may already have been archived and placed in storage. Perhaps as a result of this delay in opening files, our members are then given unfeasibly short timeframes to respond.
21. We are concerned that there is no reference to the production of guidance, for service users and providers, about LeO's approach to the new practicing models introduced by the SRA in November 2019. This is required urgently given that the new structures have now been in place for over 2 months.
22. We note that the awaited review of case fees has been omitted and this should also be a priority.

The difference LeO will have made in 3 years

23. '*Complainants (often at difficult and life-changing moments) will receive a service from LeO staff that is more sensitive to their situation*' - we assume that this is referring to LeO's Vulnerable Customer Champions. This is already in operation and we await an analysis of its success.

⁷ The staff turnover rate was 18.5% in March 2019 and was above 15% for the two previous months. This compares with LeO's annual target of less than 12%. Source - Office for Legal Complaints (OLC).

24. *'People want to come to work for the Legal Ombudsman as a key step in enhancing their career journey.'* As per our earlier comments, we welcome LeO's commitment to improving retention and morale of staff.

- **Objective 2 - Increasing the transparency and impact of our casework to support greater access to justice**

Looking forward to the next 12 months

25. Regarding the proposal to direct *'a greater proportion of its budget towards feedback work in order to provide a better insight from its casework and support firms where most appropriate'*, it would be helpful if the OLC could explain what it means by *'support firms where most appropriate'*. LeO is already sharing information and providing feedback.

Any support which can be given to our members to prevent complaints arising is welcome. However, it is not clear what proportion of additional resources would be required or how they would be deployed. It is therefore difficult to evaluate whether resources would be better directed to addressing LeO's service issues and backlog, rather than providing feedback, at least until such time as the service issues have been resolved.

26. The proposals, *'Building systematic learning as well as individual provider feedback into our operational process and articulating externally the key information from our data to highlight trends in casework.'* and *'creating a dedicated role for direct liaison with firms and individual providers to give them more tailored support'* require clarification. It would be helpful to understand the type of support being proposed to service providers and, if implemented, how success will be measured.

The difference LeO will have made in 3 years

27. *'People who wish to research potential service providers will have access to a greater range of information about the outcomes of complaints about them.'* We presume that this is referencing LeO's proposals for greater reporting of information. In October 2019 LeO set out some ambitious reporting options in its Transparency and Reporting Impact⁸ discussion paper. These options were explored in detail in our Response,⁹ which fully sets out our views.

- **Objective 3 - Developing our service to ensure it is appropriate for the evolving legal sector**

Where are we now?

28. *'Started scoping the potential of artificial intelligence to benefit different aspects of our business process and adjusted the language used in our investigations and Scheme Rules according to the results of specific research.'* We would welcome more information on these initiatives and the likely costs and benefits.

Looking forward to the next 12 months

29. *'Developing any artificial intelligence mechanisms that we find effective through our scoping project.'* Given that the information provided is high level, it is challenging for us to comment, save to say that proper costs/benefits and risk analysis should be carried out. However, if the project progresses, we would be particularly interested to know more about how any artificial intelligence would be directed, and the steps that LeO would take to avoid biases in the texts used for machine learning from adversely affecting service users or providers.

⁸ [LeO Transparency and Reporting Impact 2019](#)

⁹ [Law Society Response to LeO's Transparency and Reporting Impact paper](#)

30. *'Drawing from best practice across the ombudsman sector (and others) to identify ways that we can continue to improve our service.'* We agree with this aim provided that realistic comparators are used.
31. *'Increasing staffing to develop our organisational communications and to ensure that access to redress is highlighted in the right forums, across the sector.'* There is insufficient detail for us to comment on this proposal or the justification to increase the level of staffing.
32. One of our main concerns is that the strategy does not appear to go into any detail about the changes that the SRA's StaRs may bring about, including particularly how LeO plans to deal with complaints relating to entities providing non-reserved legal services.

The difference LeO will have made in 3 years

33. *'Sector policy takes account of the importance of access to redress where otherwise this might be put at risk by innovations and fast-paced change.'* It would be helpful if LeO could articulate where there are risks to access to redress for clients of regulated firms and how it proposes to address them.
34. *'The customer journey will be smoother and more tailored and LeO's feedback work will be more detailed due to the support offered through artificial intelligence, automation and machine learning.'* It would be helpful to understand what outcomes LeO expects and what potential costs and benefits would result?
35. *'We will understand how to close gaps in redress for people using legal services, as we listen to the experience of those in the sector and provide guidance to government on key matters.'* It would be helpful if LeO would clarify this in relation to people using services of regulated entities.

Question 3 Are there any objectives that should take priority amongst these?

36. We believe that the following objectives should take priority:
- a) Ensure that LeO's processes are fair, consistent and efficient and that service users and providers are given adequate time to respond,
 - b) Conduct a review of case fees,
 - c) Improve communications with complainants and service providers so that they have a better understanding of how to engage with LeO and what to expect from its service at all stages,
 - d) Use existing resources more efficiently to reduce delays, wherever they occur,
 - e) Address staff sickness and retention levels before addressing staff development needs,
 - f) Continue to make inroads in the backlog with the efficiencies made,
 - g) Continue the current engagement and feedback to the profession to improve standards and to increase these in the future when the more pressing objectives are achieved,
 - h) Provide clear guidance to service users and providers about LeO's approach to the different practicing models under the SRA's new StaRs,

Proposed Budget

Question 4 Do you agree with our plans for an increased budget in order to bring about the proposed improvements in customer journey and in learning and feedback to the sector?

37. The proposed increase in the budget from £12.35m to £14.76m in 2020-21 is significant, with only a very slight reduction in the subsequent 2 years. The Forward to the OLC Corporate Strategy states that ‘...we know that people's perception of our service is affected by the wait at the beginning of our process.’ It continues: ‘Performance has been getting better over the past year and we will be able to reduce waiting times by two-thirds by March 2020.’ The document then states at p3 that in the next 12 months the OLC wants to increase the levels of operational staff so that people are not waiting at the front end of [the] service. This is difficult to understand as the OLC’s published information suggests that LeO should now have more resources to deal with a smaller number of complaints as we set out in paragraph 12 above. The information that the OLC gave less than 6 months ago in its Annual report now appears to be at odds with OLC Corporate Strategy paper.
38. The following table has been copied from LeO’s Annual report and accounts 2019 which shows its income and expenditure costs for the years indicated.

What was the cost of our legal jurisdiction this year?

Legal Services Activities	2018-19	2017-18
Budgeted expenditure of the scheme £’m	12.79	11.80
Actual expenditure £’m	11.90	10.92
Less non-ombudsman scheme activity, £’m taxation and interest received £’m	0.05	0.02
Total cost of the ombudsman scheme (A) £’m	11.95	10.94
Year on year cost reduction / (increase)	(9.2%)	(4.7%)
Total cases resolved during the year (B)	6,206	6,125
Unit cost all cases (A divided by B)	£1,926	£1,787
Case fee / other income received £’m	1.20	0.89
Net – total expenditure less income £’m	10.75	10.03

39. Using the OLC’s published figures above and in the Strategy paper we have calculated the following figures indicated in bold: -

	2017/18 Actual	2018/19 Actual	2019/20 Indicative	2020/21 Indicative
Cases Concluded	6125	6206	7200	8460
Difference from year to year		81	994	1260
Total Budgeted Expenditure	11.80	12.79		
Total actual OLC Expenditure (£m)	10.92	11.90	12.346	14.758
Difference between the above 2 figures	0.88	0.89		
Percentage increase in budget from previous year		9%	4%	20%

40. The above figures indicate that in 2017/18 and 2018/19 there was an underspend against the annual budget of nearly £900,000 in each year. In the OLC's Annual report and accounts it seeks to explain the reason for the most recent underspend (p23) as being due to *'the impact of high staff turnover in year and the need to control unit cost in the medium term.'* Furthermore, if the case fee and other income is added to the underspend then it amounts to almost £1m each financial year. It would be helpful to understand the anticipated year-end financial position for the current financial year (2019/20) to see if this trend has continued and if so, to what extent this has been considered as part of the proposed increased budget requirement in the Corporate Strategy document.
41. The OLC Corporate Strategy states that 'Of the increase for 2020/21, £1.2m relates to additional staff needed to deal with the increased case closures, £0.4m for investment in feedback to the profession, and the remainder to IT costs and inflation.' This suggests that the additional staff are going to be used at the back end of LeO's process and not at the front end as the Strategy paper indicates earlier on.
42. The figures quoted above do not match the Budget allocation table set out in the Strategy document in relation to the 'feedback'. (see below)

	2019/20 £'000	%	2020/21 £'000	%
Advice & Support	1,253	10.1	1,342	9.1
Feedback	317	2.5	565	3.8
Investigation & Decision	10,776	87.4	12,851	87.1
Total	12,346	100	14,758	100

43. Bearing in mind that LeO underwent a successful IT modernisation program very recently we are not clear why further significant investment is required.
44. The proposed increase in the budget of 20% is substantial, and the OLC has provided no indication of how many additional staff are required or how they will be deployed. It would also help to know whether the proposed recruitment is intended to be permanent or temporary staff. Self-evidently, if the former, we would question whether this does not risk future redundancies when the caseload is back under control. Similarly, we imagine that LeO will have considered whether outsourcing part or all of this work might be more cost effective than the recruitment of more staff, whether temporary or permanent. It is unclear how the new staff will be funded.
45. Regarding the numbers of cases quoted in the document – there is no indication of what proportion of these are new cases and what proportion constitutes the backlog. Furthermore, there is no evidence-based explanation or assurance that this will result in obvious better service delivery.
46. The OLC has not provided sufficient detail on many aspects of the proposals. Realistic case and costs projections together with cost benefit analysis are necessary to support any proposals to an increase in the annual budget.
47. The new unit cost calculation is opaque as no explanation has been given about how LeO defines low, medium and high complexity cases. Comparing like-for-like, the unit cost

indicated for 2020/21 has increased, which is surprising bearing in mind the efficiencies that LeO says it has made.

48. As stated in the Forward to the Strategy paper '*... our essential role in the market remains unchanged. We provide redress for people where things go wrong, resolve disputes that cannot be concluded at first-tier, and share learning to raise standards.*' Accordingly, the focus of the strategy should be on realising LeO's core functions and addressing the backlog, before shifting to matters outside of its core responsibilities, at least until such time as the core service issues have been resolved.
49. We do not consider that the OLC has provided credible evidence to support the requested level of increase. Any increase in the budget is likely to impact on practising certificate fees, and there is little appetite in the profession for any such measures, particularly in the current climate, as outlined in paragraph 6. The stripping back of legal aid means that too many firms are already struggling keep afloat financially, while others are forced to close (exacerbating the problem of legal aid deserts for some types of work, with further deleterious effect on access to justice). At the same time, more than a third of trainees working in regional firms are not receiving the recommended minimum salary,¹⁰ which is symptomatic of the economic and political uncertainty currently impacting the legal sector. If yet more costs are enforced on the profession, solicitors will be left with little choice but to pass them on to clients, which could further undermine access to justice, an outcome clearly at odds with the broader public interest. Accordingly, we cannot support the OLC's proposed increase at this level.

¹⁰ <https://www.lawgazette.co.uk/news/over-a-third-of-regional-trainees-paid-less-than-minimum-salary/5103023.article>