



31 January 2020

Dear Sir/Madam

## **Consultation: The Legal Ombudsman's Transparency Discussion Paper**

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Legal Ombudsman (LeO) discussion paper on transparency. The Panel would like to make two broad points before reflecting on the questions asked.

Firstly, it is the Panel's firm belief that LeO should operate from an assumption of transparency, while taking account of the risk of information overload.

Secondly, the Panel has consistently said<sup>1</sup> it would like to see improvements in what the Legal Ombudsman publishes and how it publishes information. In 2016, we said LeO should publish a contextualised summary and analysis of cases decided informally. To date LeO has argued that s150 of the Legal Services Act 2007 (LSA) precludes it from publishing informal decisions. The Panel is of the opinion that this interpretation of s150 is extremely narrow. It hampers a key function of LeO: to cultivate and use the intelligence it gathers from its work to improve standards across the sector. We doubt that Parliament intended such a narrow application of s150. Moreover, we do not believe that a contextualised summary of informal complaints, without identifiable parties, falls foul of s150 and it would provide a richer contextualised summary.

### **Reflecting on the questions**

#### **Q1. Would adding extra filtering options for our decision data help consumers to make informed decisions when selecting a service provider? Are there other filters we do not currently offer that we should consider including?**

The Panel agrees that it would be useful if visitors to LeO's website could search and view the website by service providers, areas of law, complaint type or by remedy. As LeO asserts, these are low-cost changes that can be implemented easily. While we agree that this is unlikely to have a great impact on consumers, we believe it is an exercise worth pursuing as it will contribute to the ease with which consumers engage with the market and choose providers. Moreover, we do not believe in a silver-bullet initiative. Instead, it is the collective effect of various transparency measures that will make a difference to how consumers shop around for providers, make decisions, and drive competition.

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<sup>1</sup> Open Data in legal services, LSCP,

**Q2. Would sending annual reviews to service providers (without publishing the information) be helpful in raising standards? If so, what should the selection criteria/methodology be?**

The Panel has considered LeO's idea of sending annual reviews of complaints to service providers without publishing the information. From what we understand, LeO is proposing to collate yearly information about how it resolved complaints from specific service providers. It will collect information on whether it found reasonable service and the most common types of complaints raised about these service providers and how well complaints were dealt with by the provider. This information will not be published, it will not be shared with other service providers as a good practice tool, nor will it be shared with the regulators.

The Panel can see some merit in the collation of this information if it is qualitative in nature e.g. the review highlights how firms could have tackled the complaints better or emphasizes key service failures. But even then, such a review is arguably only useful when the body receiving feedback is asked to improve its performance and commit to an undertaking based on what was found. LeO is not a regulator and does not plan to share this information with regulators. This leaves us to ponder whether this extremely narrow form of transparency will have significant impact.

LeO has highlighted the need for appropriate resourcing. We therefore wonder whether this proposal can be considered a resourcing priority within the broad spectrum of what could be gathered and published to help consumers navigate, engage and make better decisions and to help providers improve their services.

**Q3. Would edited annual review letters be useful to consumers? Are there any risks we should take account of when considering this proposal?**

We believe such letters could indeed be useful. The Panel has consistently recommended that those seeking to provide consumers with information should consult and test the method and content of communication with consumers in advance of a final decision to publish. Testing this will give LeO meaningful insight into what consumers would find useful and empower LeO to target or tailor its information provision better.

**Q4. How might publishing full ombudsman decisions help consumers to assess quality of service?**

The publication of ombudsmen decisions serves multiple purposes:

- it gives consumers an understanding of how decisions are made, and may help them decide whether to pursue or abandon a complaint
- it can help towards redressing some of the power imbalance and information asymmetry faced by consumers in this market

- it gives consumer groups an insight into how decisions are made, and the most common problems consumers may be encountering
- it can highlight recurrent service failures by particular providers to enable consumers to choose well and use services effectively
- it highlights how service providers deal with complaints at first-tier level.
- it allows stakeholders/regulators to identify trends or recurring issues
- it highlights how LeO approaches issues and resolves problems.

As far back as 2016, the Panel recommended that LeO should publish its decisions in full. At the time, LeO said its website was not fit for publishing decisions, but that its project on Information Technology would rectify this. LeO also said that it needed to undertake preliminary work around standardisation of reporting. The Panel accepted these justifications at the time. We would like to see a realistic but brisk timeframe for publishing decisions. .

We are pleased to see LeO highlight good practices in other sectors. We know that other ombudsmen already publish their decisions in full, and we would like to see LeO follow suit.

Finally, we would like to note that transparency around how ombudsmen decide cases is closely linked to transparency about how organisations themselves operate. We note that LeO is covered by the Freedom of Information laws which have changed the expectation around access to information held by public bodies.

**Q5. In what ways could publishing full decisions have benefits for firms and the wider sector**

See answer to question above.

**Q6. What reasons should we consider for not publishing full decisions? Please provide evidence of your answer**

We do not see any reason or justification for not publishing ombudsman decisions in full.

**Q7a. Would it be useful and appropriate to be able to provide contextual information alongside our decision data? Do you foresee any potential difficulties with this, other than those already identified?**

The Panel agrees that it would be useful and appropriate for LeO to provide contextual information where practicable alongside its decision data. The Panel recognises the dangers of unintended consequences of non-contextualised data for both consumers and firms. Indeed, such data could be misleading for consumers, with the risk that it could lead to poor choices.

**Q7b (if you are responding from a regulatory body) What are some of the barriers preventing sharing contextual data, or lessons we can learn from other sectors? Are there ways in overcoming these?**

N/A to the Panel.

**Q8. Does publishing a greater range of data provide consumers with better information on which to make decisions about choosing a provider?**

The provision of large quantities of information is not always in the consumers' interest. The Panel has consistently warned against information overload. We have also said that work including testing, must go into how information is presented to consumers. We would expect this to include work around the benefits of publication as well as on how the information would be presented to consumers.

**Q9. Would it be useful for LeO to publish a greater range of data for other reasons?**

LeO may want to consider how the publication of a greater range of information could help regulators to identify risks or profile risks better. This can be done only by engaging with the regulators. We would counsel relevance before breadth.

**Q10. Would allocation of resource to changing the Legal Services Act 2007 be appropriate? Would it be most appropriate for us to work on this project?**

The Panel is not in a position to answer this question as it has not sought legal advice on how far the current Act precludes LeO from adopting any of these proposals. That said, we note that the Stephen Mayson Review provided an avenue for exploring LeO's constraints. Also, the CMA are scheduled to return to the legal sector in 2020. LeO may wish to use this opportunity to explore the limitation it considers the LSA 2007 places on its operation.

**Q11. Would you support greater investment of budget and resources into improving our data collection and analysis for the purpose of transparency?**

Yes. We would particularly support resources directed at consumer research and testing.

I hope you find these comments helpful. Please contact Lola Bello, Consumer Panel Manager, with any enquiries.

Yours sincerely,



Sarah Chambers

Chair

Legal Services Consumer Panel