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Consultation responses - Budget 2016-17

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Legal Services Consumer Panel



Janet Edwards
Legal Ombudsman
PO Box 6803
Wolverhampton
WV1 9WF

01 February 2016

Dear Janet

Legal Ombudsman consultation on 2016-2017 draft budget and draft key performance indicators

The Legal Services Consumer Panel is grateful for the opportunity to respond to this consultation and we will focus our response on the development of next year's key performance indicators (KPIs).

Whilst we recognise that KPIs can be framed at a number of different levels, the KPIs included in the consultation are pitched at such a level that they do not offer sufficient insight into how LeO will measure its performance and be held to account. We would therefore encourage publication of performance against a wider basket of measures, not just the five high-level KPIs.

Borrowing from our response to an earlier consultation on proposed KPIs the following remains true, and should be borne in mind as LeO redevelops its KPIs:

It is important that consumers have clear expectations when entering the scheme about the service levels they can expect and an explanation should the service they receive fall short of these promises. The Panel recognises that KPIs can be missed due to reasons outside of the organisation's control, e.g. complainants or providers not responding to correspondence. However, we would welcome consideration of how the Legal Ombudsman can appropriately keep individual users up-to-date if quality or timeliness targets are not delivered. We recognise this has to be implemented in a proportionate way; an overly-bureaucratic system would put more pressure on KPIs.

Against this backdrop we would like to offer the following thoughts in answering question 3: Do you agree that the KPIs we are proposing for 2016-17 are the right ones?

The Panel has previously stated that, as LeO has become more firmly established, it deserves more challenging, albeit realistic, KPIs to replace the existing measures. Having been involved in discussions on the original set of KPIs in 2011, and having responded to last year's strategy and budget consultation with some initial suggestions, it is disappointing that the Panel hasn't been engaged in developing the current set of KPIs. Whilst we understand that LeO is currently reviewing research around customer feedback – and welcome its

plans to use this to frame future KPIs – the measures set out in the consultation lack a consumer focus.

For reference, our initial thoughts as set out in early 2015 were as follows:

- **Timeliness** – from July 2015, certified ADR schemes will be expected to resolve all complaints within 90 days of the complaint file being complete. While the Legal Ombudsman will wish to continue to set its own challenging timeliness targets over a series of time intervals, it should also report against this measure.
- **Quality** – the current indicators feel light on quality and place too much weight on user perceptions. Although user views are an important part of this, we would expect to see internal checks on quality incorporated within this KPI set.
- **Fairness** – the data suggests that user perceptions of fairness of decisions are more closely tied to case outcome in LeO than in other schemes. While the nature of legal services may help explain this, things can be done to reassure users who don't get the outcome they wanted that they have received a fair hearing, for example greater transparency of decisions. Setting targets for case outcomes would risk creating perverse incentives, however we consider there is value and scope in measuring user perceptions of fairness and the reasons beyond outcome that influence those perceptions.
- **Diversity** – attracting a diverse user base should be a key priority to demonstrate that the service is accessible to all. While it may be inappropriate to set targets here (as this will depend to an extent on how well first-tier mechanisms work), this is at least an important area to monitor. Similarly, it is important to monitor any signs of discrimination in decisions (we do not suggest there is a problem, but there must be external vigilance) and investigate any patterns of dissatisfaction within specific social groups, such as BME.

We recognise that KPIs are required for cost, timeliness and volume of complaints as a bare minimum. However, in line with best practice of other ombudsman schemes, and in the interests of being a beacon of openness and transparency in the legal services market, we would expect to see additional KPIs which focus on quality, fairness and diversity – echoing the sentiments above that while diversity is not suited to targets, it is an effective measure for monitoring access of service.

The KPIs as set out in the consultation are basic. While you can achieve clarity in brevity, the risk is that the proposed KPIs lack depth. Previously we have recognised that LeO recorded the timeliness of a case as starting from when it was received, rather than when it was accepted by casework teams. This is an appropriate measure as it reflects the consumer perspective of timeliness. From the draft KPIs as set out in the consultation however it is unclear where the measures begin and end, and there is no apparent resolution target for 100% of cases (where historically it has been 365 days).

While we understand that LeO is not at this time pursuing certification as an ADR entity, if this is an option for future then we would expect to see advance planning by incorporating the necessary KPIs which reflect the requirements of the regulations. Many of these requirements are already met but are not reported by LeO and other existing ADR providers, though they should be demonstrated. For example, any evidence of systemic or significant problems that occur frequently and lead to disputes between consumers and traders. This would support LeO's operational objective to *disseminate what we learn more widely* and is, to a limited degree, already being fulfilled through thematic reports. As such we would

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like to see it captured in the proposed KPIs. LeO has a vital role in guiding the profession and sharing its insight to demonstrate what good service delivery looks like, and what service issues are most likely to give rise to complaints.

Lastly, it is unclear from the consultation paper whether or not these KPIs are being designed to serve LeO beyond 2016-17. This is important to ensure there can be consistent monitoring of performance from this strategy to the next. The Panel remains aware and mindful of the recent challenges LeO has faced, and the impact this has had on its structure and performance. However, a vital element in getting back on track will be to have consistent KPIs against which LeO can chart its progress, and continue to demonstrate how well it can deliver.

If you have any questions please contact our Panel Associate, Stephanie Chapman.

Yours sincerely,



Elisabeth Davies
Chair



The Law Society

**The Legal Ombudsman's consultation on draft
budget and draft key performance indicators
2016-2017**

The Law Society response
1 February 2016



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The Law Society of England and Wales ('the Society') is the professional body for the solicitors profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.

The Legal Ombudsman has asked for comments on its proposed budget for 2016/17. It is difficult to comment fully on the budget given that the strategy for the Legal Ombudsman has not been published. However, we note that the budget is similar to the previous financial year and thus limited change is envisaged.

We are pleased that the cost to the Profession is set to fall. However, the unit cost is still high compared to other Ombudsman Schemes and we would like to see this reduced.

We have provided more detailed answers to the consultation questions below.

Question 1: Do you agree with our overall analysis of the broader context for our budget? Are there other issues that you think we should take into account?

The broader context for the budget envisages limited changes for LeO outside of the governance review. We would agree with this assessment. However, it is difficult to comment fully given that the strategy for the next few years has not been included in the budget consultation and is due to be undertaken separately.

Question 2: Do you agree that the assumptions and risks we have taken into account in setting our proposed budget?

The budget has been based on figures for the previous financial year in relation to complaint numbers and performance. We are pleased that the cost of LeO to the profession is set to fall. However, we note that the unit cost is still high in comparison to other schemes. It would be useful for the LeO to provide more information on why this is the case.

We recognise that there is a balance between maintaining the quality of decision-making and cost reduction and we welcome the Chair's commitment to ensuring both. We would like to see LeO look at ways it could cut costs, for instance by settling complaints at an earlier stage.

We note that the case fee forms a small part of LeO's income in relation to its legal activities (less the 10%). However, the impact of the case fee on small practitioners can be considerable. For this reason, we would like to see the two free case fees reinstated and consideration given to exemptions to the case fee where work is carried out pro bono. We would also like LeO to consider whether the level of case fee should fall as part of its review of scheme rules.

The document states that shared costs will be apportioned across the two budgets in line with the impact of the additional work on LeO's overall service and that there will be increased research and information dissemination activities. The Society would welcome more information aimed at assisting solicitors in how they can avoid and/or improve how they deal with client complaints. This would be particularly helpful for small firms who may not have that much experience dealing with the Ombudsman.

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There appears to have been more of a focus on providing information to Claims Management Companies (CMCs) over the last year.

Question 3: Do you agree that the KPIs we are proposing for 2016-17 are the right ones?

We note that the KPIs on timeliness have been lowered. Data on LeO's website indicates that the current targets will not be met this year and thus the new targets are more achievable. However, without information on why the current targets are being missed and also how LeO intends to improve its performance and meet / exceed the new targets, it is difficult to judge whether the new targets are the correct ones.

The KPI on outcome quality and service quality is subject to change. We would welcome further details on the work being done around service quality, as there have been concerns raised within the Profession about the quality of decision-making.

Council for Licensed Conveyancers



The Specialist
Property Law
Regulator

CAN Mezzanine
49-51 East Road
London N1 6AH
DX36603 Finsbury
Switchboard: 0207 250 8465
e: insert email address
w: clc-uk.org

Steve Green
Chair
Office of Legal Complaints
Legal Ombudsman
PO Box 6803
Wolverhampton
WV1 9WF

1st February 2016

Dear Mr Green

Consultation 2016-2017: Draft budget and draft key performance indicators

I am grateful for the opportunity to comment on LeO's draft budget and KPIs for 2016-2017.

There are two key issues that I would suggest should be taken more explicitly into account.

The cost per legal case is set to remain high. Indeed, according to projections set out in the first paragraph of the consultation document, they are set to increase from £1,733 in 2014/2015 to £1,850 in 2015-2016 before falling slightly to £1,800 the following year. It would therefore seem that although overall costs might be reducing, they are not reducing in line with reduced demand. All of us engaged in the regulation of legal services must do all that we can to promote competition and growth and this is achieved in part by reducing the financial and regulatory compliance burden on the regulated community. I would hope that costs per case could be reduced substantially over the coming two years as the overall costs of LeO come down. Whilst we welcome the assumption that new activities will be funded separately, that can only be the case if the current cost per case is baselined according to where it should be rather than where it is currently at.

Legal service providers need clear and easy to follow arrangements for referral to Alternative Dispute Resolution. The current situation is unsatisfactory. I hope that LeO will be able to announce very soon future arrangements for ADR for the legal sector. Clarity here will mean one less compliance challenge for lawyers.

To my mind, these should be uppermost in your mind by way of priorities before more is done on voluntary jurisdictions proposals.

Further, it would be also be good to know what your position is on further mergers within the Ombudsman sector and particularly the possibilities for cost and efficiency improvements.

Yours

Sheila Kumar
Chief Executive