

Response by the Council for Licensed Conveyancers to consultation by the Legal Ombudsman on its Budget and Business Plan for 2021-2022

January 2021

Introduction

The Council for Licenced Conveyancers is grateful for the opportunity to comment on the proposed budget and business plan for the legal ombudsman for 2021 to 22. The organisation must take advantage of its new start, with a new and highly respected Chair and new COO and Chief Ombudsman, and make haste to deliver improvements to win back the confidence of the sector and consumers.

As we know the Legal Ombudsman (LeO) is currently facing a very difficult situation. The backlog of complaints waiting to be addressed continues to grow considerably and is described as the 'pre-assessment pool'. It is vital that LeO addresses and reverses this growth urgently. Failure to do so could lead to significant loss of confidence in legal services as well as raising practical difficulties for the sector as it is required to address complaints relating to matters that were dealt with some time in the past.

CLC therefore agrees with the focus of the proposed business plan. There can be no doubt that reducing the backlog down to a level that is appropriate for managing work in progress and efficient use of resources must be the urgent priority. The current situation has been developing for some time and will naturally continue to worsen if it is not urgently addressed.

It is regrettable that LeO considers that a further significant budget increase is required to deliver change, and we hope that proposal can be revisited. It is not clear how the increased budget will support improvements nor how they will be delivered. There are references in the consultation document to a people strategy and to IT improvements, but no line is drawn between the investment, changes that will be implemented and the projected improved performance.

The CLC therefore makes three key proposals:

1. A small, independent, external task force should be assembled to advise LeO on the prompt and efficient handling of consumer complaints. Its key aim would be to reduce the backlog of complaints faster than is currently planned and to ensure that in the longer term, the organisation is fit for purpose.
2. There should be enhanced external monitoring of LeO's progress against its business plan and budget to provide the legal sector, which funds LeO, with assurance that resources are being managed well and that change is being delivered effectively.
3. A revised budget and business plan should be prepared by the middle of calendar year 2021 that takes on board the learnings from the task force and that is more appropriate for the financial situation the legal sector is likely to find itself in following the impacts of COVID 19 and Brexit.

The CLC and LeO

The CLC has long had a close and constructive working relationship with the OLC. This has enabled us to have a very open exchange of views over several years about the challenges of complaints handling in the legal sector, the stresses on LeO at different points over time and steps that could be taken to improve performance at the organisation.

The efficiency of LeO is of concern to the Council for Licenced Conveyancers because of the significant financial burden that its costs represent for the part of the legal sector that we regulate, and its disproportionate size compared to the CLC's operational budget.

Given the recent additional funding agreed for the current LeO year, the project cost to the CLC is likely to rise to around £511,000. That represents one-fifth of the CLC's operational budget for calendar year 2020. For 2021, the CLC has made reductions in its own budget to reflect the likely impact of the pandemic on the economy and conveyancing market. Under LeO's proposals, the CLC's share of the levy would grow to some £600,000 in 2021, which would equal one quarter of the CLC's operational budget for the delivery of regulation and consumer protection.

The CLC's expected 2020-21 share of the levy for LeO reflects a cost per adjudicated case of £1,652. Because firms also pay a £400 fee in addition, the actual cost per adjudicated case seems to be more than £2,000.

To put this into context, 2020 research by the LSB and CMA *Prices of Individual Consumer Legal Services in England and Wales* found that for the purchase of a freehold property, half of clients were charged between £650 and £950, with the mean price overall being £891. That is less than half of the cost per adjudicated case of LeO.

Proportionate processes and reducing cost

The comparison of the cost of a conveyancing transaction with the cost of adjudication of a complaint by LeO leads us to think that the current processes for complaints handling are not proportionate to the consumer harms that are being addressed and remedied.

This conclusion is underlined by the fact that, in the comparatively few cases where a financial remedy is applied by LeO, they are overwhelmingly far lower than the cost of investigating and adjudicating the complaint. It seems that LeO is applying too elaborate or perhaps too legalistic an approach when it was established to deliver swifter consumer redress than had been the norm in the legal sector. There must be a question about whether LeO is operating an ombudsman scheme or taking a quasi-judicial approach.

The approach no doubt contributes to the growing cost per case and overall burden on the legal sector. In view of the economic outlook for the UK in 2021, as the country continues to suffer the effects of COVID 19 and the impact of Brexit begins to be felt, we propose that LeO should take time to revise its budget and business plan in-year. This will allow LeO to take account of any new and more efficient processes it can introduce quickly.

Proposal for a task force

Considering what can be observed of the work of LeO, the CLC proposes that a small, independent advisory task force be established. It should be made up of three to five members who between them have experience of consumer issues and complaints handling in particular, process improvement, and organisational turnaround. We are glad that, in correspondence, the Chair of LeO has agreed that this is a useful approach.

The CLC is willing to help identify and to nominate members of that task force.

The task force should advise LeO on how to reduce the backlog of complaints more rapidly than is set out in the proposed business plan. This is vital for the more efficient handling of complaints in the long term too as faster and more proportionate processes are needed. That is not to say that one process will be appropriate for all complaints, but that processes should reflect the scale and gravity of the impact on the consumer.

The board of the Office for Legal Complaints would of course retain all of its responsibilities. The task force would be advisory.

Enhanced monitoring of LeO performance

The legal sector's confidence in complaints handling and in LeO is currently low and this needs to be addressed urgently. We propose that the Legal Services Board should monitor LeO closely and publish a brief monthly report to the legal sector on LeO's performance against its budget and business plan. This will provide early warning of any slippage against that plan. It will also provide a mechanism for the sector to be assured that its investment in complaints handling is being used effectively.

A key element of this monitoring, that will also be important for the task force, will be to separate out complaints being handled under any new approach from those already in the system so that the new approach can be easily evaluated. Consideration should be given to whether and how newly received complaints can avoid joining the backlog by taking a different route.

Developing a revised budget and business plan

We would expect that the task force and enhanced oversight would together deliver insight and identify opportunities for reducing the cost of complaints handling and so reducing the financial burden on the sector at a time when it needs to be doing all it can to support national economic recovery.

With such a focus on process improvement and more efficient service delivery, it is reasonable to expect that the needs of the organisation will change quickly.

We therefore propose that LeO should seek to revise its budget and business plan in-year to reflect that and we suggest that this should be a requirement of LSB's approval of its initial proposal for the year.

This consultation

As well as studying the consultation documents, the CLC has taken part in a stakeholder event organised by LeO and has had direct discussions with the Chair of the OLC and the acting Chief Ombudsman. We are grateful to the Chair for sending further detailed information to us following those discussions.

These most recent meetings gave us an opportunity to interrogate further the proposals set out in the consultation documents. We regret that the level of detail provided to support the proposed business plan and budget still does not give us confidence that the provisions that are being made, the activities that are being proposed, and the changes that are being planned will result in the outcomes that the LEO envisages.

Responses to consultation questions

Priorities: Have the right priority areas for the Business Plan been identified? If not, what should the Legal Ombudsman be addressing?

The business plan rightly identifies the need to tackle the backlog and the clear need to reshape processes and manage resources differently. Our view, though, is that the backlog needs to be cleared more quickly than is envisaged alongside and separate from the delivery of significant improvements to process and people. Our reasoning and recommendations are set out above.

Budget: Is the budget set at the right level to allow the actions in the Business Plan for 2021/22 to be completed?

We regret that we are not able to assess whether the proposed budget is that which is necessary to deliver the business plan because we are not able to draw a line from the level of investment through proposed changes at LeO to improved performance that will tackle the backlog and be sustained over time.

For that reason, we propose enhanced monitoring of LeO's performance and that the organisations needs are reassessed and set out in a revised budget and business plan during 2021-22 to reflect progress that is made in developing and delivering short- and long-term improvement.

Engagement: Do you have any learning and experience to support the innovation work being undertaken under priority two?

The CLC is able to recommend individuals with relevant experience who could help drive progress on different approaches to complaints handling.