

## **OLC Business Plan 2022-23 Consultation**

### **Response from the Council for Licensed Conveyancers**

**13<sup>th</sup> December 2021**

#### **Summary of the CLC's response to the OLC**

##### ***Funding***

The OLC is seeking a marginal increase of 1.3% against its planned 'indicative' budget for 2022-23 outlined in Spring 2021. This is said to be needed to accelerate the delivery of radical options. Given underspend in the current year, the CLC believes that the OLC should try to find the additional £188,000 within its overall projected budget of £15,261,352.

If, through scrutiny and accountability during the year, the OLC is able to demonstrate that it is on target against the business plan and that an additional sum would hasten delivery of so-called radical improvements, then the LSB could be asked to consider a request.

##### ***Staffing***

The CLC strongly urges the OLC to put in place outsourcing arrangements with suitably experienced individuals or organisations (other ombudsman schemes, law firms, former investigators and ombudsmen etc). We set out below why we believe this is possible despite past legal advice procured by the OLC on recruitment.

##### ***Process reengineering***

Demand management and early resolution pilots have been shown to be effective and should be built into LeO's permanent processes. OLC should bring forward permanent changes to its processes as quickly as possible and with the assistance of the Challenge and Advisory Group, these must be proportionate to the task at hand.

##### ***Full timetable needed for eliminating the backlog***

Alongside its annual business plan and budget the OLC should set out a clear timetable for eventually eliminating the backlog and getting the OLC to a state of delivering an efficient and cost-effective service. The published proposals only take us to March 2024 where the backlog might have reduced to 2985, or roughly half the level expected in March 2022. Does this mean the project to eliminate the backlog and achieve an appropriate PAP level will take 4-5 years? If so it should be clear so that stakeholders can judge whether that is reasonable in all the circumstances. The demand and service delivery assumptions over that period should be set out.

## Introduction

The CLC welcomes the opportunity to comment on the OLCs proposed business plan and budget for 2022/23.

Our response is concerned with the actions that are proposed by the OLC to improve performance as well as the financial implications of those proposals. We have addressed the questions posed by the OLC in the consultation though these do not actually address the core matter of when the OLC intends to be providing an acceptable, efficient and cost-effective service.

We note the work undertaken by the OLC in 21/22 to identify ways of improving performance of the service it provides. We welcome the measures taken in 21/22 to secure 'early resolution' of some cases that would otherwise have remained in the 'pre-assessment pool' for a considerable time. We welcome too the greater level of dialogue there has been with stakeholders this year, though we consider that could be improved further.

We do appreciate the challenges which the new management and leadership team at the OLC have inherited, such that the service has a backlog of complaints equivalent to a whole year's resolution of cases, with some complainants waiting for more than 1000 days for a decision after their case has been accepted for investigation and the OLC taking, on average, 24 days to respond to general email enquiries<sup>1</sup>.

However, we are disappointed that the proposals set out in the business plan for next year – and beyond - do not show clearly whether or when the OLC will be resolving complaints quickly and in a cost-effective manner. It is not clear what the target performance would be for an acceptable, efficient and cost-effective service or how long the OLC thinks it needs to achieve that. Going forward the plan seems to be proposing that the backlog might reduce to 2985 by March 2024, or in other words that OLC intends to roughly halve the backlog in a further two years. **The CLC does not consider that is an acceptable pace of progress to achieve an efficient and cost-effective service.**

Whilst appreciating that the OLC is subject to an annual business plan and budget approval cycle we believe that the proposals for 2022/23 should be presented in the context of a full longer-term plan targeting an acceptable standard of service and cost efficiency. This is vital to ensure that the reputation of the OLC and the legal sector is not seriously damaged by the current complainant experience.

We do not consider the backlog should be permitted to exist for an extended period and whilst the business plan and budget only concerns one financial year the OLC must outline how long a backlog is expected to persist for beyond that and target acceptable case clearance times. We also seriously question whether the current targets OLC has set to close cases within an average of 500 or 325 days (for low complexity cases) are acceptable, particularly in light of the statement in the Business Plan consultation (p26) that *'nearly half of all the cases investigated by the Legal Ombudsman result either in an outcome that the service provided was of a reasonable standard or that the detriment to the consumer was either negligible or non-existent'*.

---

<sup>1</sup> The Agreed Data Set shared with stakeholders shows that at September 2021 the maximum 'customer journey time' until case closure for a high complexity case was 1017 days and the average days to respond to an email to the general enquiry team in 20/21 was 24 days..

It is particularly disappointing to us that the backlog in cases has grown within 21/22 (compared to the forecasts made only in Spring 2021) and that at the end of March 2022 the backlog is expected to be 2000 cases higher, at 6732, than was forecast less than 12 months ago in the current LSB approved business plan. This is a significant worsening of the position compared to the present approved business plan for 21/22. It is a worsening of position which does not seem to be driven by any increase in demand for the service in 2021/22, and even with measures of change taken this year to resolve some cases in the backlog 'early'.

The legal sector seems to be faced with a Hobsons choice in this consultation of whether to increase further funding for the resolution of service complaints beyond their already high level of ca. £2,000 per adjudicated complaint. We note that this compares very unfavourably with the Financial Ombudsman Service which is undertaking significant work currently to improve its service although it already has much lower costs per case than the OLC, of £1073, and higher levels of productivity per caseworker. Although two budget options are proposed by the OLC it is not clear what the different results might be from those two options and OLC should clarify that. Without that clarification we find it difficult to see the case for the budget to be increased above the indicative budget for 2022/23 set out in the 2021/22 approved business plan. If the plan contained ultimate efficiency and financial targets for the organisation to achieve for a new 'business as usual' stakeholders could decide whether those targets were right and achievable and whether the actions proposed are the appropriate ones for reaching those targets.

The challenges to us being able to provide support for the proposed further increase in budget beyond the indicative budget expressed Spring 2021 include:

- The Plan contains no target for improving established investigator productivity beyond a forecast of 5.8 case closures per month by the end of the current year<sup>2</sup>. We would expect that number to improve through the focus on staff recruitment and on reengineering processes. However, it seems to the CLC that this measure of productivity is remarkably low at the moment, and this should become a key visible metric of performance in any approved business plan and budget regularly reported on e.g. via the commonly agreed data set
- There is a heavy focus on recruitment of permanent staff when the large backlog is temporary (albeit multi-year) issue that will be resolved at some point. The OLC says that past legal advice indicates that work can only be carried out by employed staff, not contractors or agency staff. While the Legal Services Act 2007 (LSA) does refer to the 'appointment of staff' in Schedule 15, a later section of the Schedule also states:

*Arrangements for assistance*

*18(1) The OLC may make arrangements with such persons as it considers appropriate for assistance to be provided to it or to an ombudsman.*

*(2) Arrangements may include the paying of fees to such persons.*

---

<sup>2</sup> We note that the FOS is achieving 2.0 resolutions per caseworker per **week** or 8 per month and is seeking to improve its performance back to at least a 14/15 performance of 2.7 per week, or 10.8 per month.

*(3) The persons with whom the OLC may make arrangements include approved regulators; and the arrangements it may make include arrangements for assistance to be provided to an ombudsman in relation to the investigation and consideration of a complaint.*

This provision would seem to allow the outsourcing of complaints investigation. **We strongly urge to the OLC to review its position that legislative change is needed to enable outsourcing.** We are very concerned that the improvement plan places over-reliance on achieving legislative change and locks in the current level of performance. The LSA provision above could mean that immediate and fixed-term outsourcing arrangements could be used to reduce the backlog and perhaps also to develop and test new, more efficient approaches to complaints handling and the OLC and LSB should approach this issue with more creativity on the basis that improving customer service and consumer confidence in the redress arrangements is a very important aspect of a well-functioning legal services market. .

- A key challenge identified by the OLC in the current year has been around recruiting staff with the right skills. While initiatives are planned to address this, we cannot know from the proposed business plan whether they will succeed. In-year reporting of progress will be vital for confidence in the OLC.
- The more radical changes that will be needed to return the Pre-Assignment Pool to an acceptable level are untested, so we cannot know how effective they will be. As a recent paper to the LSB Board noted a priority is *“the need to reengineer the scheme so that it resolves the large majority of cases quickly and with minimum formality – the key design concept in the Legal Services Act 2007.”* However, at this stage, the OLC’s estimates are just that and rely on future decisions. Given recent history, before injecting further funds, the Board will wish to satisfy itself that such a level of turnaround on this timescale can be achieved.” The view of the CLC is that such a judgement is almost impossible based on the published draft Business Plan, so implementation of the OLC’s plans will need to be subject to close oversight by the LSB and through openness and accountability to stakeholders – regulators and the regulated community.
- It is a matter of some concern that the agreed data set has not yet been published widely to help inform stakeholders and especially that the Challenge and Advisory group does not appear to have given close consideration to it as yet and was not consulted in the development of that data set. Such a data set should be a key tool for the OLC to use to regain the confidence of stakeholders by demonstrating effective change and improvement. It will be important that it is a clear and meaningful dashboard of performance data with minimal commentary from which all stakeholders will be able to see clearly whether the OLC is making progress. We would also advocate incorporating and drawing on appropriate comparators.
- The budget and business plan do not set a target for productivity for individual staff. A case closure rate of fewer than six cases per month per established investigator does not seem acceptable especially when it is appreciated that the complaints in question relate to customer service issues and around half result in no further action being required. Even where LeO requires an increased compensation payment, those payments are dwarfed by

the cost of the investigation. This points clearly to a disproportionate approach that must be tackled as quickly as possible. More proportionate and rapid processes must be a priority.

## General remarks

The CLC has been concerned about the increasing costs per case of the Legal Ombudsman for some years. We recognise that the new leadership of the OLC and LeO have made great efforts to 'own' the problems they have inherited of very poor performance and provide more and better information about the work and costs of the organisation. However, the current budget and business plan documents do not make it easy to gain insight into the impact of the proposed actions, dominated as they are by lengthy prose and supported by limited financial and complaints-handling data and labels in at least one table that are not reflected in the text.

This rise in costs has largely taken place over years when the sheer number of complaints have been falling, raising concerns about productivity and the effectiveness of cost control. Indeed the backlog of complaints has grown in the current year and the organisation will end the 2021-22 period in a substantially worse position than it began. We note that recruitment challenges have hit output forecasts and that new approaches to recruitment are in development aiming to address the issue.

It should be said that in relation to CLC -regulated firms the current year has seen some growth in referrals to LeO. However, the absolute numbers of complaints against CLC firms remains low at around 1 complaint per firm on average, with some firms seeing no LeO referrals at all and some several. This was all analysed in detail in the CLC's [submission to the LSB on setting regulatory fees for the year 2021-22](#). The growth in referrals, along with the high costs of LeO's complaints handling, both prompted the introduction of a 'user-pays' element to the recovery from regulated entities of the CLC regulated community's share of LeO's escalating costs.

The CLC is pleased that pilots of early resolution have been effective in reducing demand for LeO's services. This is a good step for complainants and lawyers, representing as it does a significant improvement in service and expectation management that will also protect the reputation of LeO and the legal sector in time. We look forward to these approaches being adopted routinely. We believe that these developments, along with wider changes to the scheme rules and business culture could bring the OLC closer to the intention of Parliament when it created the body in the Legal Services Act.

The CLC encourages the OLC to take as open and pragmatic view of what is possible under its governing legislation. While it may be necessary for some primary legislation to be amended to allow LeO to work more effectively and efficiently, every effort should be made to modernise as far as possible within current restraints as the timing of legislative change would be likely to be slow.

Finally we would urge OLC to seek appropriate comparators for its performance and to learn from other similar bodies in both the public and private sector on how to resolve the problem of the backlog and secure an acceptable and cost effective for the future. For example the Financial Ombudsman service has recently completed an independent review of its performance which very usefully considers potential demands and risks for the future as a result of changes and developments in the financial services market, which the OLC has not considered. We would like to

see the OLC produce a similarly forward-looking assessment of likely demands and consideration of whether its model is appropriately designed to meet those demands. The FOS performance metrics that result from this review, as well as its plan for tackling the built up backlog, could be very useful comparators for the OLC.

## **Answers to the consultation questions**

We set out below our answers to the consultation questions. However, the heart of the matter is whether the budget and business plan are acceptable. Clearly, the current performance of the OLC falls far short of what is acceptable, as the OLC sets out in its plans. The question then is whether the plans set out will achieve the recovery everyone wants to see. The experience in the current budget year does not give confidence that it will, but the sector has no realistic alternative to the OLC continuing its recovery efforts.

We hope that the proposed budget can be rebalanced to achieve faster reduction in PAP through immediate implementation of the improved processes LeO is developing and through increased experienced temporary or external resource that can be scaled back over time.

### **1) This document is being shared with you following a year of enhanced public accountability. What are your confidence levels in the Legal Ombudsman scheme compared to this time last year?**

The CLC notes the improvements in openness at the CLC under its new leadership. Greater efforts have been made to answer questions and engage with stakeholders generally. That has to be balanced by the slow start to making use of the considerable resource of the Challenge and Advisory Group and the fact that the so-called 'agreed data set' has not yet been set out for consideration by all legal services regulators and market participants.

In terms of confidence in delivery, little has happened to increase confidence. Reasons for that are set out in the plan – most notably recruitment difficulties and limitations in founding legislation and scheme rules. Recruitment is addressed at length in the plan, but the CLC believes that much more focus needs to be put on process reengineering within current restraints and reviewing whether outsourcing is in fact possible without legislative change, as would seem to be the case. In addition as highlighted above we would have expected to see this Business Plan proposal provide a clear view of whether and when the backlog might be reduced to an acceptable waiting time for customers, and what the target acceptable performance actually is for the future, even if that is achieved beyond the 22/23 financial year.

### **2) Specificity is key for the credibility of the Business Plan but it is also important to avoid 'information overload'. What would you like to see more information or detail on in the final Business Plan issued in the New Year?**

This business plan is too wordy. A lot of the key information could be presented more clearly than in prose form. A key measure will be investigator productivity, as this will reflect the sum total of all of the efforts that are made to improve organisational performance and culture and improve processes. It will be useful to have that measure alongside information about overall PAP numbers, work in progress and investigation times. Additionally the Business Plan should be proposing clear

targets for the customer experience in the coming years and show how those will be improving and ultimately what the target acceptable level of performance/customer experience is. We do not consider it acceptable that customers have to wait on average 500 (or 325) days for a decision or that any customer should have to wait 1017 days for a decision which the 'Agreed Data Set' for September 2021 shows to be the case.

**3) The Legal Ombudsman must avoid over-promising and under-delivering. To this end this document seeks to openly set out the different confidence levels in the impact of what is being proposed. Is this a helpful approach to adopt?**

This is a helpful approach. We hope that the published business plan will be able to set out low and high range scenarios against a central scenario that sets out the OLC's realistic expectation for improvement. These would most usefully be presented graphically, supported by the underlying numbers and assumptions for each scenario. As noted above in setting out a one-year plan for 2022/23 we would like the OLC to provide a proposed date by which the backlog will have been cleared and service to customers is at an acceptable and cost-effective level. This will enable stakeholders to consider whether the 2022/23 year is making a sufficient contribution to resolving the present problem.

**4) Historically there has been an emphasis on plans to tackle the size of the preassessment pool but there are better and more customer-centred ways of measuring sustainable acceptable performance. Should the Legal Ombudsman place more emphasis on individual customer experience, the value for money the service provides, the wider impact of the scheme or other measures?**

The OLC's agreed data set shows that some customers experienced a wait of 1017 days for a decision on their case after it had been added to the pre-assessment pool. We do not consider this is acceptable and it is a function of the size of the PAP as it presently stands. Therefore the OLC **MUST** place emphasis on reducing the backlog and reducing the backlog will improve a key aspect of customer experience – the time it takes for OLC to make a decision. Customer experience must be the key measure for the handling of service complaints, alongside cost. Accordingly, the CLC considers the key metrics to be:

- Investigator productivity (in terms of closures per month)
- Length of investigations/time taken to resolve or decide
- Costs per adjudicated complaint
- Customer satisfaction with outcome, time taken and communication (complainant and legal service provider)

We are content for OLC to look to measure impacts, including wider improvements and value added it has secured as a result of investigating individual complaints but given the present parlous state of performance this must not be at the expense of focussing on the hard realities of providing a timely, efficient and cost-effective service.

**5) What are your views about the proposed budget for 22/23? If you disagree with the proposed budget, what elements of the Business Plan should be changed in order to address this?**

As the CLC has made clear over a number of years, the OLC's budget seems unnecessarily high for the volume of work carried out and on a cost per case basis is double that of a comparable body the FOS which is dealing with a wider and changing range of products and services than the OLC is. However, the immediate priority must be to reduce the backlog and improve resources and processes. We expect that this will deliver cost reductions in time.

Given the time-limited nature of the backlog, there should be a shift away from recruitment of permanent staff to temporary resource of some kind. The Legal Services Act seems to enable this at Schedule 15, S18. We urge the OLC to consider every short-term option available to it now to increase the speed at which the backlog can be reduced as this is key to the reputation of the organisation and of the legal sector.

To the extent that the OLC has outlined two budget options for 22/23 we do not support the higher of the two options for the reasons discussed above.

**6) Are there further measures that LeO should consider implementing in order to improve its performance?**

As mentioned above, the application of temporary resource to tackle the backlog and potentially develop and test new processes with the input of the Challenge and Advisory Group plus learning from other organisations that may have tackled a backlog equivalent to a year's work in the past and the FOS who are facing the need to set out a plan to do that.