

Response to the OLC Consultation on its Strategy and Business Plan

December 2023

Introduction

The CLC welcomes the opportunity to comment on the draft strategy and business plan for the Office for Legal Complaints (OLC) and the Legal Ombudsman (LeO).

As a keen and early proponent of the early resolution approach to handling the simpler complaints received, the CLC is very pleased that this is having such a positive effect on LeO's work. We look forward to continued improvement in working methods, especially around the efficient handling of cases that should be dismissed under rule 5.7, as we set out below.

The CLC is committed to working with LeO to continue the improvement of complaints handling whether that is through improving the handling of complaints at first tier or looking at the operations of LeO and the sharing of learning and insight gained from those operations.

However, the CLC remains very concerned about the proportionality of effort and cost that is going into the handling of second tier complaints about service provided by lawyers. All conduct complaints are investigated by the relevant regulator.

Looking at data provided by LeO on second tier complaints about CLC-regulated firms in the last full year (2022-23), it seems that:

- Few cases accepted by LeO require ombudsman time before they are closed. The overwhelming reason for dismissal being that a reasonable offer was made at first tier.
- Only one-quarter of cases accepted require a financial remedy of more than £300 in addition to anything that was offered at first tier.

These two points seem to indicate that first tier complaints handling may be improving, as less corrective action is required by LeO and the financial element of any action is generally low and falling.

Despite that trend, the Average Case Unit Cost report by LeO to the Board of the OLC was £4,567 for Q1 2023/24 against a published target of £2,065 for the current year. We recognise that the Average Case Unit Cost brings in all of the costs of the Legal Ombudsman/LeO, including the handling of the large number of enquiries and so on. However, it is the measure that we have and its level seems disproportionate in light of the first two points and also now more than double the OLC's own published target.

The CLC's concern about cost arises not from any unwillingness to fund properly the handling of complaints, but from the need to ensure that the overall economic burden of regulation on the consumer and the economy is proportionate. It is vital that users of legal services have access to redress that is timely and effective. At the same time, the approach must be proportionate and deliver good value.

The CLC's responses to the consultation questions, below, should be seen in the light of the CLC's strong commitment to good complaints handling and of better regulation principles.

Strategic objective for LeO's service and 2024/25 plans

- 1. Do you support the OLC's draft strategic objective for LeO's service and supporting aims? What would success look like to you as we move from 2024 to 2027?**

CLC Response

The CLC supports this draft strategic objective, and we suggest that the ambition for timeliness should be reflected in its articulation. Timeliness is important for consumer and legal sector confidence in the complaints handling process. It is also helpful for any remedial action to take place as close as possible in time to when the complaint arose.

Good progress has been made through the early resolution approach for simpler cases and with the early dismissal of those that are out of time or where a reasonable offer has been made at first tier. We assume this has contributed to the overall faster conclusion of cases and should have freed up time and resource to progress complex cases more quickly.

In response to the next consultation question, we look at one way in which further Ombudsman time could be freed up for cases that merit investigation.

- 2. Do you support our proposed plans for this first year of the strategy, 2024/25? Is there anything on your horizon that you think could influence demand for LeO's service?**

CLC Response

Making sure resources are properly focused

Looking at the data for CLC-regulated practices provided by the OLC, in the last two full years of 21/22 and 22/23, the number of complaints received went up considerably compared to previous years, as did the number of enquiries closed before being accepted.

However, data provided by the OLC shows that only one-quarter of all CLC cases investigated by the Legal Ombudsman were viewed as not having been handled adequately at first tier. One might expect a higher proportion of cases accepted for investigation to result in a finding that the original complaint was not correctly handled. That is because cases accepted for investigation should be skewed towards meritorious cases (even if self-referrals to second tier are not).

We would always expect a proportion to be found to have been handled adequately at first tier, because the system should err on the side of caution by accepting cases that are close to the threshold for acceptance. However, the data might indicate that LeO could winnow out sooner in the process more of the 77% of cases of ombudsman decision that are found to have been handled adequately at first tier. Might the current profile, which appears to lead to a significant use of LeO resource, be a product of how criteria for acceptance are set or interpreted? If so, this might point to a priority for action in 2024/25.

Moving the dial so that a greater proportion of Ombudsman is able to be spent on cases that are more likely to merit further action, whether that is an improved financial offer or other step, would make better use of resources.

More data to drive action to improve complaints handling

As discussed at the stakeholder event run by the OLC on its strategy and business plan consultation, LeO is being approached by growing numbers of consumers who have not been through the first tier process. This may be because they are seeking faster outcomes to their transaction or could be driven by frustration at delays in registering title at HM Land Registry, for example. It may also be that they are not properly aware of the first tier process. This range of possible explanations points to a need for more, and more granular, data from LeO to drive better insight to inform action by regulators to improve first tier complaints handling.

Strategic objective for LeO's impact and 2024/25 plans

- 3. Do you support the OLC's draft strategic objective for LeO's impact and supporting aims? What opportunities do you see for strategic alignment and collaboration? What would success look like to you as we move from 2024 to 2027?**

CLC response

The CLC is very supportive of the idea that LeO should provide more insight and learning from second tier complaints handling. It is notable that such a large proportion of complaints to LeO arise from a narrow range of causes. This implies that it might be possible to focus on those causes of complaints with practices to make considerable inroads to the level of complaints overall.

The CLC sees considerable scope for joint working in this area. In 2019 LeO ran with CLC an online session for a small number of CLC practices that were generating disproportionately high levels of complaints. That generated valuable insight into some of the reasons behind the challenges in those practices. The CLC would very much value the opportunity to develop further such joint initiatives to improve the handling of complaints.

As suggested above, we would like to focus first on those areas where there is the greatest scope to make improvements immediately. This should then free up time and resource to look at other issues.

So the CLC considers that there should be an ambition to reduce the number of referrals to second tier over time, though this will of course need to be accompanied by work to ensure that is driven by improved practice at first tier rather than anything else.

- 4. Do you support our proposed plans for this first year of the strategy, 2024/25?**

CLC response

As will be evident from our comments above, the CLC especially welcomes the work set out at page 13 of the business plan; 'We will share learning and insights that help lead to better legal services for consumers.' As we have historically, the CLC remains keen to work closely with LeO to develop tailored interventions that can have an impact at scale.

We of course support LeO's efforts to continue to improve efficiency. We hope that LeO will want to make more use of the Challenge and Advisory Group as we believe they will have considerable value to add to the next stages of the evolution of LeO's work. The CLC would also be very happy to put questions or ideas to its own Consumer Reference Group for consideration if that would be helpful.

5. Do you support the proposed 2024/25 budget for LeO?

CLC response

The CLC has long expressed the view that the costs of complaints handling are disproportionately high evidenced by the cost by case and set against other benchmarks . The CLC hopes that joint working across the legal sector to reduce referrals to second tier, as well as improved efficiencies within LeO, will deliver cost reductions over time.

As the effort to bring waiting times under control is completed, and an appropriate and stable level of work in progress is reached, we would expect that costs would reduce. We note that in the past, OLC has explained that this will be achieved through natural wastage. Nevertheless, it would improve stakeholder confidence to see the ambition and a plan for cost reductions to be included in the business plan and reflected in the Strategy. That has been referred to in the past by the OLC as an intention but is only referred to here, if at all, as efficiency.

6. How might LeO's funding arrangements need to evolve over the course of the strategy – for example, what changes might be made to the case fee, and how can LeO's learning and insight programme be fairly and sustainably funded going forward?

CLC response

The CLC considers that it should be possible to fund the learning and insight programme cost savings elsewhere in the organisation as the cost of complaints handling falls. As the balance of costs tilts slightly away from investigation and slightly towards services that are of general use across the sector, perhaps the availability fee element of LeO costs recovered through regulators could be rebalanced to more accurately reflect the value of the learning and insight programme to the entire sector. The current ticket price of x has not changed since y despite the increasing overall cost of the OLC.

It might also be worth exploring whether the case fee charged in some cases should be increased to deliver more of a deterrent effect and to place some more of the cost burden (albeit still a modest part) on the practices that generate second tier referrals. This might be a flat case fee as now or one that increases according to complexity.

7. Do you have any other feedback on the OLC's draft 2024-27 Strategy and 2024/25 Business Plan and Budget?

CLC response

As we have made clear, the CLC is of the strong view that the costs of complaints handling at second tier must reduce. The cost burden ultimately falls on the users of legal services and the complaints handling operation, as with all parts of the regulatory infrastructure must deliver good value for money.