



## **Council for Licensed Conveyancers response to Proposed changes to the Legal Ombudsman's case fee structure**

### **Introductory observations**

The costs of the Legal Ombudsman (LeO) have increased very rapidly and significantly in recent years, in part, to address the backlog in case handling and establish more effective processes for the future. The cost per case, shouldered by regulators but ultimately passed on to practices and in turn to consumers, has therefore increased very significantly and remains much higher than comparator organisations such as the Financial Ombudsman. We hope that costs will be able to be reduced as the backlog is eliminated and the organisation is able to maintain a consistent level of work in progress across time.

The changes to the case fee proposed in this consultation are not aimed at cost recovery. The larger part of LeO's costs being met instead by a levy on the regulated community based on the number of complaints received by LeO. Increasing the proportion paid by those practices that place the greatest burden on LeO is a desirable step.

However, it appears (though we cannot be certain based on the data provided by LeO) that the number of ombudsman decisions is reducing. This is likely going to result in lower income from poor complaints handling by firms, which could create an incentive to increase the case fee. LeO will need to be alert to this risk and ensure that future increases do not go beyond what is justifiable in relation to those cases where there is an Ombudsman decision.

A particular concern is the high proportion of investigations that result in a finding that the complaint was handled effectively at first tier. Reducing this proportion through tighter management of escalation to investigation could reduce LeO costs. It would also have the effect of improving the perception of LeO as it would save the regulated community time and money assisting investigations that could have been avoided. This could in turn improve cooperation with LeO.

### **Question 1 - The case fee will increase. To what extent do you agree or disagree that the proposed inflationary increase to £600 (rather than the £800 originally proposed) balances the need to increase the Legal Ombudsman's case fee whilst mitigating the risk of an adverse impact on the sector or individual providers?**

The CLC is pleased to note that LeO recognises the value in a polluter pays model. LeO's approach is consistent with the CLC's own approach to the OLC Levy allocation and in our view, will incentivise improvement in first tier complaints handling and in turn, support better outcomes for consumers.

The CLC supports an increase in the case fee and considers it to be a demonstrable shift towards a more impactful polluter pays model which will increase the incentive-value of the model. The CLC considers this to be a more equitable means of distributing the LeO costs burden across legal services providers.

The CLC agrees that an inflationary increase to £600, whilst cautious, stops short of being an overt punishment and is likely to mitigate the risk any perverse behaviours or conduct that a greater increase might drive. We would however urge LeO to ensure that it captures (and reports) data on impact. Evidence of whether the increase to £600 has in fact incentivised positive change and improvement in complaints handling will support future reviews and ensure that decisions are informed by data about real impact rather than likelihood of impact.

**Question 2 - To what extent do you agree or disagree that a regular review of the level of the case fee level should be introduced?**

The CLC strongly supports regular review of the case fee if review includes genuine consideration of both potential fee increases and decreases. We would however emphasise the importance of review being informed by reliable data on the impact of previous increases/decreases and evidence of whether the anticipated benefits have been realised.

As highlighted in our preliminary comments above, LeO's current baseline costs do not represent value for money for the sector nor consumers. With ongoing concerns about the availability/ease of accessing LeO data, the quality and timeliness of that data and the lack of transparency regarding the threshold test for accepting cases for investigation, before embarking on a process of regular review of case fees, we would argue that there is a strong case for a wider review encompassing Leo's current operations, funding and spending arrangements more generally.

**Question 3 - To what extent do you agree or disagree that every five years is an appropriate level of frequency for a review of the case fee arrangements?**

In addition to our concerns outlined above regarding the growing cost burden that LeO's current, some might say ineffective, operating model places on regulators, the legal sector and ultimately consumers, we are strongly of the view that the existing charging mechanism does not work with current processes, and therefore support the principle of more frequent review.

Given that the pace of change in the legal sector is likely to increase for reasons including the growing use of AI in legal services, digitisation, particularly of the conveyancing process, and reforms being introduced in the Courts and Tribunal service, we consider that review every 5 years is an unduly long period, particularly if any agreed increase were only implemented in year 6.

Although the CLC does not agree that every five years is frequent enough, we agree that annual or even bi-annual review would be problematic, particularly if any review were to coincide with short-term economic volatility impacting the legal sector. If, as we suggest, future reviews are evidence based and as is the case now, any changes are subject to consultation and approval by the Legal Services Board, we question whether it is necessary to specify a review period at all. In the alternative, if certainty demands a defined review period, we support a period of less than 5 years as outlined below.

Advances like AI have the potential to change the legal services sector and improve the consumer experience and consumer outcomes, and we would hope this would have a positive impact on consumer complaints. But against what is likely to be a rapidly evolving sector, we consider that more regular review is justified in the interests of consumers. To leave the case fee static for as long as 5 years whilst the sector continues to evolve risks creating either a wider

void between LeO funding needs and the case fee thus demanding significant increase to the case fee, or conversely, if numbers of complaints drop dramatically as a result of advances and improved levels of consumer service, the risk is that a high case fee would become a potential income stream for LeO which exceeds its funding needs and is thus inequitable.

In the CLC's view, a cyclical review commencing at the end of year 3/start of year 4 following any previous case fee review, with implementation of any increase or decrease at the end of year 4/start of year 5 would be reasonable and justified, without running the risks outlined above or that LeO is concerned about in relation this proposed increase. A review at this rate would also ensure that LeO had at least 24 months and potentially 36 months of data about the impact of any previous increases to support the next review (assuming that any data from year 1 of any revised case fee would be incomplete because it would generally always be a transition year where both the old and the new case fee were in play depending on the date of the complaint).

An alternative model which would avoid the need to make large increases at infrequent intervals as in the current case, might be annual increases linked to inflation, so that any future changes, following periodic review, are less individually significant. However, whilst this is an option, as we have stated throughout this response, any mechanism that provides for review and the potential for fee increases should be incorporated into a broader review of the wider LeO funding model, its efficacy as an organisation, and the year on year increase in operating costs.

#### **Question 4 - Do you agree to the proposed change to the Legal Ombudsman's Scheme Rules?**

Whilst we have set out our responses to the consultation questions and in principle support the idea of more regular review of case fees and a shift towards a more impactful 'polluter pays' model, as we have noted in our responses above and in our preliminary comments, the case fee is a discreet element of the wider LeO funding model which itself is in need of review given the increasing costs, poor value for money and an apparent apathy when it comes to addressing the long-standing concerns that we and other regulators, and indeed CLC practices have voiced, about issues as significant as data quality, timeliness and access to reliable

End.

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