



Bar Council response to the Legal Ombudsman consultation on 'Strategy and Business Plan 2017-2020'

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Ombudsman 'Strategy and Business Plan 2017-2020'¹
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Question 1: Do you agree with the analysis of the strategic drivers (pages 3-6)?

4. We agree that the strategic drivers that have been outlined are broadly appropriate but we would like to make a few observations about the analysis contained within some of the associated 'key issues' outlined in the document.
5. The Bar Council recognises that Digital Comparison Tools (DCTs) can take many guises and can range from directories to price comparison websites or review platforms. We can see the benefit of regulatory data as well as objective information about complaints against providers being published in both a standardised and centralised forum. This would facilitate comparison of legal service providers by consumers. It is worth highlighting, that we have expressed concerns about certain types of DCTs, in particular in our response to the Competition and Markets Authority legal services market study. Our concern is that review platforms can lead to distortions in the market. This is because consumers on occasion, can be influenced by the outcome of their case, rather than on how well their legal services provider has acted for them. There is also a risk that such tools would not provide a 'level playing field'

¹ Consultation available at: <http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Board-strategy-business-plan-FINAL-170125.pdf>

for providers, since there could be constraints on lawyers that prevent them from responding to critical reviews because of Legal Professional Privilege or simple client confidentiality. We encourage the LeO to bear this in mind when working with stakeholders on DCTs.

6. Whilst the Bar Council can see that the intention behind the proposal to extend the system of redress to clients of unauthorised providers is to protect consumers, we are concerned that in practice, there is a real risk that such a change would lead to greater confusion about the distinction between unregulated and regulated providers. Consumers may also expect such providers to be regulated and carry professional indemnity insurance. Mitigation of this risk ought to be a key priority for LeO if such a proposal is taken forward.

7. We should also emphasise that it is the Bar Council's view that reserved activities should only be provided by authorised providers that are regulated and insured in accordance with the Legal Services Act. Redress to LeO for the provision of high risk legal services is no substitute for the full range of protections offered by regulated providers such as barristers who are bound by strict ethical obligations outlined in the Code of Conduct, Legal Professional Privilege and who are obliged to have professional indemnity insurance in place.

8. We are conscious that presently, the Legal Ombudsman is funded through the annual practising certificate fee that service providers pay to their regulators. As a matter of principle, regulated providers should not pay for the cost of an ombudsman scheme for clients of unregulated providers. This encompasses both the costs associated with policy development delivery of such as scheme. The Bar Council is of the view that unregulated providers being investigated by the LeO should bear the cost of the investigation in accordance with the 'polluter pays' principle. In the alternative, this could be funded by a separate levy on the unregulated sector, distinct from the levy from regulated providers. However we question whether this would be practically feasible.

9. We note that one of the LeO's strategic drivers is the LSB's vision and strategy for the future of the regulatory framework. It is worth noting that we are strongly opposed to the creation of a single regulator for the legal services sector and instead support a specialist regulator for the Bar. Barristers have a distinctive and complex set of responsibilities to the court and to clients which clearly distinguish them from other lawyers, and it is important to have a regulator that understands this complex set of professional obligations and can regulate accordingly. A well-regulated Bar in turn underpins the rule of law and the effective operation of our justice system. A specialist regulator is also more likely to ensure that the costs of regulation are proportionate to the regulatory risk posed.

10. The LeO has highlighted that it wishes to influence first-tier complaint handling to better understand and reduce the causes of complaints and improve signposting to LeO. We have recently updated the guidance documentation² that we provide to public access barristers. Within this document, we include information about signposting to LeO so that barristers can include this in their client care documentation. We would be happy to work

² Available here: <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/client-care-letters-in-public-access-cases/>

with LeO on the provision of feedback to the profession and are well placed to do perform this role.

Question 2: Are the vision, mission and strategic objectives the right ones (pages 7-10)?

11. Yes, be broadly agree with these.

Question 3: Are our planned activities the right ones to deliver our four proposed objectives? Have we missed any, or are there any we should deprioritise? (pages 12-16)

12. The Bar Council does not have any concerns about the proposed activities. We note that the LeO intends to roll out its professional learning courses to the Bar and we would be happy to provide information to the profession about these. We support LeO's intention to work with vulnerable consumers and would be happy to work with LeO on its project to improve first-tier complaints handling as outlined above.

Bar Council

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