

The Association of Consumer Support Organisations (ACSO) response to the Legal Ombudsman 'Business plans and budget consultation 2021/22'

The Association of Consumer Support Organisations (ACSO) welcomes the opportunity to respond to the Legal Ombudsman (LeO) [consultation](#) on its business plans and budget for 2021/22.

ACSO was established in January 2019 to represent the interests of consumers in the civil justice system and the reputable, diverse range of organisations who are united in providing the highest standards of service in support of those consumers. Its role is to engage with policymakers, regulators, industry and the media to ensure there is a properly functioning, competitive and sustainable civil justice system for all consumers.

Question 1. Have the right priority areas for the Business Plan been identified? If not, what should the Legal Ombudsman be addressing?

Yes. The three priorities for the upcoming financial year appear sensible and rightly focus on improving the ombudsman's operational functions over the short and long term.

Priority one, *to maintain stable operational delivery and reduce wait times at pre-assessment*, relates to the core function of an ombudsman service. The focus on improving LeO's operational work is essential, particularly as a number of stakeholders have expressed concern over the ombudsman's ability to deliver a stable, timely and cost-effective process for dealing with consumer complaints.¹

Consumer waiting times for an investigation into their complaint are troubling, not least as the number of people waiting for an investigation is expected to reach 5,000 by the end of the financial year.² The minimum six-month wait for an investigation to start is likely to frustrate consumers and may serve to undermine public confidence in legal services and their regulation. We note that LeO has experienced significant caseload backlogs for a number of years and this problem has been exacerbated by the ongoing coronavirus pandemic.

More research is required as to the impact of long waiting times upon consumers, specifically whether there is evidence to suggest that waiting times lead to poor behaviour from legal service providers and/or impact upon service quality or competition in any way. We understand that wait times are a source of consumer dissatisfaction, however the wider implications need to be understood fully.

As a related point, other ombudsman services, such as the Property Ombudsman, ensure complainants are informed fully of the progress of their complaints through regular updates. As such, we urge LeO to do the same. Regular communication and increased transparency

¹ See, Professor Mayson, S., [Reforming legal services: regulation beyond the echo chamber](#), Centre for Ethics & Law, University College London, June 2020, p.64; and, Competition and Markets Authority (CMA), [Review of the legal services market study in England and Wales: an assessment of the implementation and impact of the CMA's market study recommendations](#), 17 December 2020, p.129.

² Legal Ombudsman (LeO), [Business plan and budget consultation 2021/22](#), 14 November 2020, p.4.

help to alleviate any concerns a consumer may have that, owing to the long waiting time, their complaint is not being progressed. Furthermore, regular communication enables team members quickly to address any problems the consumer may be experiencing, such the need for additional support.

ACSO has conducted research into technology and innovation in order to understand better how technology is, and is likely to, impact upon consumers and the structure of the UK legal systems themselves. The report, due to be published in the first quarter of 2021, is likely to be useful to LeO in regard to furthering priority two, *developing innovative ways to deliver the service more efficiently and to keep pace with evolving legal sector and consumer expectations*. ACSO would be pleased to discuss our findings and provide any additional advice or evidence as required by LeO.

In regard to priority three, we welcome the proposal to increase transparency and provide greater learning and insight for the legal sector. By doing so, LeO will aid the promotion of best practice and the identification of common or systematic issues within the sector. Moreover, shared learning from complaints has the potential to reduce the overall number of complaints, thereby holding clear benefits to consumers through the provision of more efficient and effective legal services.

In its 2020 review of the legal services sector, the Competition and Markets Authority (CMA) stated the need to address the lack of information available to consumers on complaints. For instance, LeO decisions are not published in full, despite how this information could provide consumers with signals about the quality of service and advice.³ The CMA goes on to state the importance of contextualising complaints data, in order to ensure the data is fair to providers and meaningful to consumers. This echoes the argues made by ACSO in our response to the LeO discussion paper on the ways it can improve the transparency of its work.⁴ We note that despite the discussion paper closing for comment on 31 January 2020, LeO is yet to publish a formal response to the paper, including the specific measures it intends to take to improve transparency and provide consumers with the data required to make better-informed decisions on which legal provider to use. Given LeO's proposal to provide greater learning and insight, the outcome of the discussion paper would be both timely and welcome, not least given the request for a 19 per cent budget increase for 2021/22.

Question 2. Is the budget set at the right level to allow the actions in the Business Plan for 2021/22 to be completed?

Given the ongoing Covid-19 crisis, and the resultant economic uncertainty, it may not be an appropriate time for LeO to be granted an investment budget of £15.26 million. LeO currently receives the majority of its funding through an industry levy to approved regulators and a

³ CMA, [Review of the legal services market study in England and Wales: an assessment of the implementation and impact of the CMA's market study recommendations](#), 17 December 2020, p.80-81.

⁴ The Association of Consumer Support Organisations (ACSO), [ACSO responds to LeO consultation on transparency and reporting](#), 31 January 2020.

case fee, paid by the law firm which has a consumer dispute, which stands at £400.⁵ There is a risk, which the Bar Council has also highlighted, that the increased budget will lead to an increase in the OLC levy, which will be passed on to consumers by legal service providers charging higher fees.⁶ If the requested budget is granted, LeO will need to ensure that consumers do not suffer detriment through a concurrent rise in the cost of legal services. This is particularly pressing given the financial hardship many individuals are experiencing as a result of the pandemic, as well as the perception held by many consumers that they are unable to afford legal services which results in rising unmet legal need.⁷

LeO had a unit cost (the total cost of the ombudsman scheme divided by the total number of cases resolved during the year) of £1,926 in 2019/20, an increase of 8 per cent from 2017/19, alongside a £1.36 million increase in the total cost of the ombudsman scheme.⁸ In comparison, the Financial Ombudsman Service (FOS) had a unit cost of £920 for 2019/20, albeit this had increased from £713 in 2018/19.⁹ We acknowledge that the unit cost of the ombudsman is not necessarily an effective measure of its efficiency. For example, the figure does not account for the wider value the LeO provides to the legal services sector, such as through the provision of data, the support provided to consumers and its work on identifying best market practice. In addition, legal complaints tend to be costly to deal with owing to their complexity and the likelihood of more ombudsman decisions being required. However, LeO's high unit cost has long been recognised as a concern, not least due to the implications for its case fee policy and ambitions to widen its jurisdiction, including from the CMA and Professor Stephen Mayson.¹⁰ For this reason, we urge LeO to consider how best to reduce the unit cost, albeit not at the expense of making savings on standards-raising work. Given the substantial difference between the unit cost of FOS and LeO, we recommend increased cooperation between the two services, alongside other ombudsman services, in order to share learnings and ensure a cost-effective, stable and timely process can be provided.

As stated in the Legal Services Board (LSB) *State of Legal Services* report (2020), LeO needs to “strengthen its leadership, culture, change management, systems and governance”.¹¹ Although an increased budget could no doubt aid these changes, we believe LeO should work within its existing budget until such a time as the economy has recovered from the impact of Covid-19, and LeO is able to provide a more detailed cost analysis of the benefit any additional financial support would grant. In regard to this latter point, specific detail, is, for example, required as to how LeO intends to increase the efficiency of its complaints process, improve transparency and provide feedback to service providers.

⁵ Competition and Markets Authority (CMA), [Review of the legal services market study in England and Wales: an assessment of the implementation and impact of the CMA's market study recommendations](#), 17 December 2020, p. 129.

⁶ The Bar Council, [Bar Council news update](#), 19 February 2020, p.1.

⁷ According to the Legal Services Board (LSB), 3.6 million adults in England and Wales have an unmet legal need every year involving a dispute. LSB, [The State of Legal Services 2020](#), 25 November 2020, p.23.

⁸ The Legal Ombudsman (LeO), [Annual report and accounts: for the year ending 31 March 2020](#), 14 July 2020, p.21.

⁹ Financial Ombudsman Service (FOS), [Annual report and accounts for the year ended 31 March 2020](#), p.50.

¹⁰ See, Legal Services Consumer Panel (LSCP), [Benchmarking the Legal Ombudsman](#), November 2013, p.3.

¹¹ Legal Services Board (LSB), [The State of Legal Services 2020: a reflection on ten years of regulation](#), 01 December 2020, p.36.

Question 3. Do you have any learning and experience to support the innovation work being undertaken under priority two?

Investment in innovative ways to improve service delivery is likely to be the most effective means of reducing the backlog of complaints. As mentioned above, ACSO has conducted research into the ways in which technology and innovation are changing the legal landscape. The report will outline the opportunities and obstacles related to legal technology (LawTech) and makes specific reference to dispute resolution, the automated creation of legal documents and e-discovery (where information is sought in electronic format), all of which are likely to aid LeO's complaints investigation process. Again, we would welcome the opportunity to present our findings to LeO and provide any additional advice and/or evidence as required.

LeO has previously piloted 'nudge theory' approaches, which aim to ensure the complainant and the service provider re-engage during the waiting time and attempt to resolve matters between themselves without the need for LeO. We understand that approximately 5 per cent of cases in the pre-assessment pool managed to reach an agreement, although we would have hoped for this number to be higher.¹² Of course, any measure which aims to settle cases relies upon an agreement being reached between the complainant and the service provider as both parties are entitled to an ombudsman decision. However, nudge theory or similar approaches may provide an effective means to reduce the backlog of complaints and we would welcome further information on the details of the pilots and their outcome.

The LSB's report on the state of legal services recommends that that LeO finds dispute resolution models that can deliver timely and effective redress for consumers.¹³ This is an additional area where there is an opportunity for joint working between LeO and ACSO. Through our alternative dispute resolution (ADR) working group, we actively champion the developing role of ADR across the civil justice system. Furthermore, over recent months ACSO has been facilitating and brokering ADR pilots between law firms and major insurers. The data from these pilots, which will be collected and collated at the beginning of February, is likely to provide learning and insight for LeO in regard to suitable dispute resolution models.

To conclude, we support the three priorities for the upcoming financial year outlined by LeO, which hold clear potential benefits for consumers, such as through a reduction in wait times and a more efficient complaints procedure. In addition, greater transparency and analysis of the causes of complaints will aid the identification of common or systematic issues within the sector, thereby leading to a reduction in the overall number of complaints and improving the consumer experience of legal services. However, we are concerned about the timing of the requested investment budget of £15.26 million. The coronavirus pandemic, and the measures put in place to mitigate the spread of the virus, has resulted in a great deal of economic uncertainty. Indeed, the consultation document states that regulators and representative bodies have said that a budget increase would be challenging.¹⁴

¹² Information provided during LeO consultation meeting on 02 December 2020.

¹³ Legal Services Board (LSB), [The State of Legal Services 2020: a reflection on ten years of regulation](#), 01 December 2020, p.36

¹⁴ Legal Ombudsman (LeO), [Business plan and budget consultation 2021/22](#), 14 November 2020, p.7.

In agreement with the LSB, there is a need for LeO to strengthen its leadership, culture, systems and governance. As such, we welcome the news that the OLC has new leadership, that the LeO executive team is being strengthened and that work is being conducted to address the underlying institutional weaknesses it has identified.¹⁵ The impact of these changes should be assessed fully before any budget increase is granted.

15 January 2021

For further information, please contact:

Rachel Cairnes
Policy and Public Affairs Adviser
The Association of Consumer Support Organisations (ACSO)
rachel.cairnes@acso.org.uk

¹⁵ Legal Futures, [Legal Ombudsman dilemma: Increase funding or find an alternative](#), 02 December 2020.