



The Law Society

Legal Ombudsman strategy and business plan 2017-2020

The Law Society's response
February 2017



Introduction

The Law Society of England and Wales ('the Society') is the professional body for the solicitors' profession in England and Wales, representing over 170,000 solicitors. The Society represents the profession to Parliament, government and regulatory bodies and has a public interest in the reform of the law.

The Society is supportive of the collaborative and open manner in which the Legal Ombudsman (LeO) has engaged with stakeholders to improve its service and procedures in recent years as it has overcome significant challenges. We look forward to working with LeO in 2017 to improve the guidance that we provide to solicitors to ensure that they fulfil their regulatory requirements and signposting requirements effectively.

Question 1: Do you agree with the analysis of the strategic drivers?

The Society broadly agrees with the strategic drivers identified by LeO.

We agree that LeO's primary focus should be ensuring that it provides a good quality service to clients and the legal profession so that disputes can be resolved quickly and efficiently. This focus is particularly important given the anticipated cuts to LeO's budget.

The Society has always been clear that the regulated profession should not subsidise complaints scheme run by LeO covering unregulated firms. Similarly, it would be inappropriate and unreasonable for any groundwork exploring the potential for such an extension of LeO's jurisdiction to be directly or indirectly funded through solicitors' practicing certificate fees.

Moreover, whilst the number of unregulated providers might be relatively small, at the present time, the CMA report makes it clear that its intention is to promote competition and to increase the number of unregulated providers.¹ This would place an increasing burden in terms of funding and resources going forward. It would be unfair to expect that the solicitors' profession would be required to finance any such expansion.

Furthermore, it is the solicitors' profession which has financed the set up costs of LeO. Therefore, if the jurisdiction were to be extended, it would only be fair and equitable for unregulated providers to be charged at a level which would subsidise the core activities of LeO relating to the solicitors' profession in recognition of its payment of LeO's formation costs.

In addition to the strategic drivers mentioned in the consultation paper, we believe the SRA's ongoing review of its Handbook is likely to have a considerable impact on LeO and its jurisdiction. If changes allowing solicitors to provide unreserved activities within unregulated firms are introduced, this is likely to reduce consumer protections for the clients using these services. We have concerns about the lack of clarity and potential difficulties in determining LeO's jurisdiction and believe these proposals would substantially increase the risk to consumers.

¹ Para 51(c) - CMA final report makes a number of short-term recommendations, one of which is to remove regulatory restrictions to allow solicitors to practice in unauthorised firms

Question 2: Are the vision, mission and strategic objectives the right ones?

We broadly agree with LeO's vision and mission, as proposed in the consultation document.

We are encouraged to see that the plans are more detailed than in previous years and we support LeO in measuring itself against the regulatory objectives.

The Society is in favour of LeO sharing information and evidence and providing feedback on complaints to the profession. This helps solicitors to improve the service that they provide and avoid having complaints escalated to LeO.

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 de-prioritise?

LeO's planned activities seem to be the right ones to deliver the proposed objectives. We would also like LeO to consider doing more to influence professional practice by sharing case studies in a useful and easily accessible format.

We welcome the work that LeO is planning to undertake to ensure that staff have access to learning and development opportunities necessary to their roles. We have received anecdotal evidence from solicitors expressing concerns that staff at LeO lack sufficient understanding of the law and practice and that there is delay in resolving complaints put to LeO, particularly with regard to cases that should be dismissed or discontinued.

Question 4: Does the strategy strike the right balance between realism and ambition in maximising the impact of our scheme, modernising the organisation and the changing legal services landscape?

As mentioned above, LeO's focus should be on running a competent complaints scheme. LeO has had a difficult few years and upcoming budget cuts will not make things easier. Promoting good quality complaints handling should be the priority.

The strategy identifies that LeO does not wish to pursue an 'explicitly expansionist strategy' but will 'exploit opportunities to extend consumer redress through changes to our jurisdiction and developing our service'. These statements seem incongruent and whilst the Society would support the former, we are less convinced about the latter. As we have said in previous responses, solicitors' practising fees should not be used to subsidise work to explore new jurisdictions. This is especially so in circumstances where the solicitors profession has funded the start up costs of LeO. The Society also continues to be against an expansion in LeO's jurisdiction to cover third party complaints as such a change would create new and conflicting duties for solicitors and would be difficult to administer.

The Society would expect a full economic impact assessment to be undertaken if LeO is considering an expansion of its jurisdiction to allow small and medium-sized enterprises to complain. This is standard practice in Government when new

regulation is being considered. The change would require secondary legislation as it would require an order under section 128 of the Legal Services Act.

Question 5: Do you have any specific comments on our budget for 2017-18 and our business plan?

We note the expenditure of the legal jurisdiction has been falling year on year, which is encouraging. However, we believe maintaining performance while delivering the 15% efficiency target by 2019-20 will be challenging, especially in light of upcoming transition of the CMC jurisdiction.