

OLC / Legal Ombudsman Business plan and budget consultation

Minster Law is pleased to be able to participate in the Office for Legal Complaints' Business Plan and Budget consultation for 2021/22. As one of the market leading personal injury law firms in the UK, we support customers with a diverse range of needs and providing an excellent level of service is very important to us. Where things might have gone wrong it's also of paramount importance that we put things right as quickly as possible and restore faith in our service delivery.

Effective complaints handling is a key part of this, and we welcome the opportunity to be able to give some insight into this consultation.

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

The areas that LeO are seeking to address are in some respect appear quite obvious, especially priority one when you consider the modelling forecasts for customer wait times and outcome decisions. However, working closely with LeO through a number of case decisions, what does appear to present an obstacle to early resolution most of the time is the operation of the case fee.

This appears to be the root cause of many of the challenges that arise. There are two potential options that you may wish to consider:

Option 1

The fact that this is charged only where there's been a change in decision means that LeO are potentially losing out on a substantial sum of money. If you take the Financial Ombudsman Services' operating model as an example, then they charge a case fee on any case that they take on, irrespective of whether or not this upheld or not. There is found to be unreasonable service on approximately 50% of the case investigated by LeO. The assumption is therefore that the case fee is only charged on around 50% of cases worked on.

From a volume perspective, a rough approximation tells us that a case fee won't be charged on around 3,000 cases per year. With the case fee set at £400, it could be argued that this is lost revenue of £1,200,000 – a substantial sum of money.

It is acknowledged that any change to the case fee mechanism may require a change in legislation and that this is just a different way of funding some of the budget, so may still attract negative press and resistance. However, it very clearly incentivises firms to make every effort to prevent escalation to LeO and could result in lowering case volumes alongside generated much needed revenue.

Option 2

Alternatively, there was a proposal to incentivise the early resolution of cases by increasing the case fee as it hit certain milestones within your process (so less for informal, normal case fee for tier 1, increased case fee for tier 2).

There is presently little incentive for legal entities to resolve early in the process – some will be stubborn and will want to get their "money's worth" out of the process. All the firms who only have a small number of cases won't mind doing this and it will have little impact upon them as individual firms. However, this will have a significant impact upon LeO if this is the majority approach to your complaint handling process.

Having a tiered case fee, increasing the further down the LeO process a complaint travelled, would incentivise firms to resolve early in the process. This would unlock some of the efficiency gains which are presently very difficult to realise.

We appreciate that the substantial blocker to this is the existing legislation within the Legal Services Act 2007, and this wasn't considered last time due to Brexit. It is in our view still worthwhile considering doing this – you could substantially increase the funding and potentially change the behaviour of legal entities (using either option). Had this been moved forward when originally suggested there is a chance this could already have received parliamentary approval etc.

It's worth pursuing this route in any event, changing the wording of the legislation to make charging of the case fee more flexible is always going to be of benefit to you in the future (even if it takes a long time to change).

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

It's difficult to say with any certainty whether or not the budget is set at the right level as we do not have the same level of insight as LeO into the financial requirements needed to achieve operational stability. However, there does seem to be a clear rationale with specific performance forecasts to illustrate the likely impact of different levels of funding.

Engagement: Do you have any learning and experience to support the innovation work being undertaken under priority two?

Yes, we do.

The standardisation of information requests is a tricky one where it may be difficult to strike the right balance.

For the majority of cases we presently deal with, you request specific items relevant to the complaint in question, and emphasise that we should only send you what you've requested. We understand that the benefit of this, is that there is less paperwork to review, making the review process on the whole less time consuming.

However, there is a downside to this. Quite often, we will provide the specific information but following review this will lead to further questions and additional ad-hoc requests for more paperwork. It might be that we have to go back and forth two or three times with an Investigator before they have all the information they require.

This inadvertently make the process less efficient and extends the time it takes to reach a tier one decision.

But the problem isn't really solved by requesting the full file of papers as then the review process takes much longer, even though it removes the need for any back and forth with the legal entity.

There are challenges with both of these approaches, so it will be interesting to see if a truly innovative approach can be introduced which allows for a more efficient process.

As an aside, using an automated process to pinpoint key information in a complaint file might be a dangerous approach as it could lead to key information and points being missed in an investigation. This could lead to less effective tier one decision making.

It will also be interesting to see how a more streamlined adjudication process might work. From our perspective, the process itself appears to be relatively streamlined. We provide our file and associated comments. A decision is made and then we accept or reject. If we reject we provide our comments why we've done so.

The more significant challenge would appear to be around your attempts at informal resolution.

Much of the time, you wish to speak about the complaint in the first instance which is your route in to attempting to resolve the complaint informally. These discussions take around 15-20 minutes on each complaint and most of the time there is a degree of inevitability on the outcome. There can be a wide gap in terms of views on resolution and so for the majority of cases informal resolution can't be achieved.

There may be other peripheral benefits from having this conversation but on the whole it does feel like time wasted which could be better spent on investigating the file.

This ties back in with the mechanics of the case fee and there being little if any incentive to resolve matters informally. This is always likely to be a thorn in LeO's side when trying to realise efficiency gains of any significance within the complaints process.

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