

# Consultation response

## Legal Ombudsman: Strategy 2012-2015, Business Plan 2012-2013

### Overview

1. **The Legal Ombudsman has a tough job to forecast case volumes in a rapidly changing external landscape. ABS, legal aid, the Jackson reforms, changes to the boundaries of regulation, technology, the economy, empowered consumers, outcomes-focused regulation, equalities legislation and proposed EU legislation, are all relevant drivers.**
2. **The Panel would welcome moves to bring claims management activities within the scheme's jurisdiction.**
3. **The Key Performance Indicators (KPIs) are broadly in the right areas. We suggest additional areas of focus in relation to diversity, ineligible complaints and complaint outcomes, although these may not be suitable for numeric targets. Transparency – to stakeholders and users – is the best tool for sharpening the Legal Ombudsman's approach to measuring KPIs.**
4. **The emphasis on using intelligence from complaints to help raise standards is warmly welcomed. The consultation mentions some specific ideas, but we would like to see these brought together into a clearly defined and coherent strategy with commitments to timelines. Proposed activities in relation to**

**enhancing accessibility are welcome too, although again more specifics are needed alongside the generality.**
5. **Plans to develop a voluntary jurisdiction are strongly supported. The Panel would ideally like to see mandatory redress for all legal services, but switching on the voluntary jurisdiction would be a helpful stop-gap. In a competitive market, offering consumers access to redress should make commercial sense for any legal business wanting to signal its commitment to consumer protection. The Panel has a statutory role in relation to establishing a voluntary jurisdiction and we look forward to working with the Legal Ombudsman on this.**

### The proposals

6. **The Legal Ombudsman is consulting on a draft Strategy for 2012-2015 and Business Plan for 2012-2013.**

### The Panel's response

7. **The Legal Ombudsman is a very important partner organisation for the Legal Services Consumer Panel. It forms a vital part of the consumer protection machinery through its twin functions of providing a dispute resolution service and using the intelligence from complaints to help raise standards. Elements of our relationship are formalised**

in the Legal Services Act, such as our role to recommend changes to the jurisdiction of the scheme and compensation limits. We have independent and separate functions under the Act, and we will not agree on every issue, but we share the aims of improving access to redress for consumers, delivering effective systems of redress and raising standards. A memorandum of understanding underpins our relationship.

8. The Panel welcomes the twin themes in the consultation: improving performance of the core dispute resolution service; and using intelligence to help raise standards. As the Legal Ombudsman's systems are bedding down, now is the right moment to develop this second strand in earnest. Indeed, this is what marks out ombudsman schemes from other types of dispute resolution organisations. Below we address each of the questions in the consultation in turn.

**Q1. We have suggested what we think are the broader contextual issues that need to be considered in developing our Strategy and Business Plan. Are these the right ones? Would you add any of your own? Please give your reasons.**

9. We agree the broader contextual issues outlined are relevant – ABS, legal aid, the Jackson Review, gaps in the regulatory framework, new commercial service providers and impact of new technologies. In particular, we see that the last of these could present new and difficult challenges for the Legal Ombudsman and, indeed, approved regulators. For example, it raises issues around sale of products as opposed to services (e.g. DIY kits), the prospect of dubious marketing ploys and referral

mechanisms to entice consumers, quality of services, privacy issues, traceability of providers and jurisdiction issues including where providers are based overseas.

10. The Panel suggests five additional wider contextual factors:
- The economy – history suggests that people's legal needs tend to increase when the economic climate is worse, for example more employment disputes, higher social welfare law-type problems such as benefits and housing, and an increase in family law-type issues as personal relationships become strained. In addition, the propensity to complain is increased because people cannot afford not to seek compensation due to their tight finances, whereas previously they may have chosen to 'put up with things'. Of course, some legal needs reduce at times of economic hardship, such as volumes of conveyancing transactions;
  - More empowered consumers – the key theme of the Panel's Consumer Impact Report was the need for action to empower consumers in their dealings with providers. The current government is promoting this agenda as it sees the link between empowered consumers and growth. Legal services are some way behind other markets, but there are signs of change, such as the emergence of comparison websites and voluntary quality schemes as "choice tools". ABS and technological advances should also stimulate demand-side competition. In the short-term, we see empowered consumers as more likely to complain when things go wrong. Longer-term, the

effect of competition should be to raise service standards so that the need to complain is consequently reduced;

- Outcomes-focused regulation – new codes of practice for solicitors and other authorised persons may change consumers' expectations of providers and make it easier for them to see when things go wrong. For example, solicitors now have a broad-based duty to treat clients fairly – this is easier to grasp for consumers than prescriptive rules. Equally, an outcomes-focused regime may create greater uncertainty for professionals, at least in the short-term, which may lead to disputes over the appropriate course of action. The Legal Ombudsman decides what was fair and reasonable behaviour, rather than whether this was consistent with professional rules, but the regulators' codes of practice may inform this;
- Equalities legislation – new equalities laws come into force next year; this may impact on complaint volumes in areas such as firms failing to make reasonable adjustments or discrimination; and
- EU legislation – since this consultation document was published, the European Commission has issued a draft directive on alternative dispute resolution (ADR). There is some way to go before the measures enter UK law, but these may have a series of consequences for the Legal Ombudsman in relation to its jurisdiction and ways of working.

**Q2. We have set out our assumptions in planning for the coming three years. Are these the right ones? How would you refine, alter or add to our assumptions to assist with our planning?**

11. The contextual issues described above may impact on case volumes, although it is hard to forecast whether volumes will increase or decrease overall. Improved compliance with the first-tier complaint handling rule and the OLC's policy to publish the names of law firms in cases subject to formal ombudsman decisions should both have the effect of reducing case volumes. On the other hand, changes to the scheme's jurisdiction – due to regulatory developments or changes to the scheme rules – should lead to a rise in complaints. Indeed, uncertainty over what the level of complaints will be each year is one reason to support an extension to the Legal Ombudsman's jurisdiction as such diversity offers flexibility in the event of fluctuations within individual case types.
12. Two anticipated regulatory changes may have a significant upward effect on case volumes. Firstly, the Institute of Chartered Accountants in England and Wales has announced plans to apply to become a licensing authority. The level of uptake of ABS among accountants is an unknown, but the number of legal transactions is potentially significant including by small businesses. Secondly, the Legal Services Board is due to consult in 2012 on the regulation of 'special bodies'. An outcome of this exercise might be that not-for-profit organisations are brought within the Legal Ombudsman's jurisdiction. Again, the third sector is a major provider of legal advice in the area of social welfare law. Therefore,

these two changes would both increase case volumes and the nature of complaints.

13. The Panel would welcome moves to bring claims management activities within the scheme's jurisdiction. It is odd for the regulator to act as both rule-maker and complaints-handler. Such a step would enhance redress for consumers of claims management companies as the Claims Management Regulator cannot require firms to pay compensation. We note that during 2009-2010 the Regulator assisted over 7,000 consumers who experienced problems with claims management firms; thus, if this change occurred the area could account for a significant proportion of the Legal Ombudsman's future caseload.

**Q3. Do you have any comments on (a) the approach to forecasting we have taken and (b) the ranges of volumes we have anticipated?**

14. Better data would enable more accurate forecasting about number of contacts to the Legal Ombudsman, for example it is now expected that approved regulators collect data at first-tier level. Further analysis and investigation in relation to the higher than expected proportion of complaints that reach ombudsman decision is also needed. For example, is this due to factors outside of the Legal Ombudsman's control such as the complexity of cases, or factors that it has some influence over, such as managing consumer expectations and checking consistency/fairness of decisions.
15. We have further nothing to add to our comments in response to Question 2.

**Q4. We have set out five key performance indicators (KPIs) and strategic objectives. Do you agree with them? Please give your reasons.**

16. The Panel took part in discussions on the original set of KPIs and we remain of the view these are broadly in the right areas. We especially welcome the KPI relating to Impact – the consultation provides as an example working with other bodies to create a more efficient and seamless redress system, but activity around using the intelligence from complaints to help raise standards would also be relevant.
17. It is important that the KPIs are sufficiently challenging, albeit realistic. It is welcome that the timeliness target begins when the complainant first contacts the Legal Ombudsman rather than when an initial contact becomes a complaint (as happens in some other schemes) as the former is how consumers would consider timeliness.
18. The KPI on Quality rightly covers elements of both service and fair decisions; however, the measures described seem mostly to relate to the first of these. The Panel and the Legal Ombudsman have informally discussed processes for monitoring the consistency and appropriateness of case outcomes. In particular, we would like you to begin a regular process of independent reviews of a sample of case files. As this work progresses, we suggest that the Legal Ombudsman builds a numerical measure of fairness of decisions into this KPI.
19. We suggest other areas of focus, although for reasons explained below these might not be suitable for numerical targets:

- Diversity – statistics on the profile of complainants would provide insight on the accessibility of the scheme to each part of the community, in particular if any groups are under-represented. However, we recognise that the profile of complainants is driven in part by the profile of all legal services consumers – this is outside the Legal Ombudsman’s sphere of influence;
  - Ineligible complaints – statistics on complaints which the scheme is unable to consider would indicate whether the Legal Ombudsman’s jurisdiction is correctly drawn. However, whilst some elements of the jurisdiction are within the OLC’s control, e.g. out-of-time limits, others elements depend on decisions by others, e.g. the LSB’s work on the boundaries of regulation. This could also include referrals to/from other ombudsman schemes; and
  - Complaint outcomes – there is a strong emphasis on resolving cases through informal resolution, so statistics on this could provide a useful insight into the Legal Ombudsman’s performance. However, again, this is not fully within the organisation’s control. For instance, this is affected by consumer behaviour or by policies affecting providers, such as the OLC’s recent announcement to name firms in complaints involving formal ombudsman decisions.
20. For most consumers, the Legal Ombudsman will be the public face of the reforms, so its performance will be seen by commentators as a proxy for the success of the new regulatory landscape.
- Q5. Is there anything you would add that would help us sharpen up our approach to introducing and measuring KPIs and delivering our strategic objectives?**
21. The Panel considers that transparency is the best external-facing incentive for this. We welcome the commitment to begin reporting on performance against KPIs from April 2012. We encourage publication of performance against a wide basket of measures, not just the five high-level KPIs, in order to allow stakeholders to analyse data in sufficient granularity. It would also be good practice to provide a short note against each KPI which has not been met explaining the reasons and any remedial steps planned or taken, where relevant.
22. It is important that consumers have clear expectations when entering the scheme about the service levels they can expect and an explanation should the service they receive fall short of these promises. The Panel recognises that KPIs can be missed due to reasons outside of the organisation’s control, e.g. complainants or providers not responding to correspondence. However, we would welcome consideration of how the Legal Ombudsman can appropriately keep individual users up-to-date if quality or timeliness targets are not delivered. We recognise this has to be implemented in a proportionate way; an overly-bureaucratic system would put more pressure on KPIs.
23. The proposed EU Directive could have implications as it envisages the inclusion of specific information in annual reports such as average time taken to resolve cases and the creation of a single competent authority

in charge of monitoring the functioning of ADR schemes. It will produce regular reports on the development and functioning of ADR schemes; this would enable comparisons between ombudsmen in the UK and across Europe, although an issue is that schemes use different measures to monitor and report on their performance.

**Q6. We have outlined a series of activities and deliverables over the life of this Strategy and Business Plan. Do you have any comments on what we are planning to do? Do you think we have placed our emphasis correctly in the way we are planning Years 1, 2, and 3 of the strategy? Have we missed anything?**

24. We warmly welcome the emphasis on using intelligence from complaints to help raise standards and maintaining close relations with approved regulators, to identify areas for improvement, compliance with first-tier complaint handling rules and to highlight potential instances of misconduct.
25. The core function of dispute resolution schemes is to resolve disputes, but the standards-raising function is one of the unique elements that separate an ombudsman from other types of ADR body. In April 2012, the Legal Ombudsman will have 18 months of operational experience and this will be the right time for it to fully explore this side of its role. The consultation document mentions some specific ideas, such as thematic reports, data mining and seminars aimed at the profession. These are all welcome initiatives, but we would like the Legal Ombudsman to bring these together into a clearly defined and coherent strategy with commitments to timescales.
26. We welcome the proposed activities in relation to enhancing the accessibility of services, although we would wish to see some specifics alongside the general. This is particularly relevant in the next period as new equalities legislation comes into force. The Panel is keen to work alongside the Legal Ombudsman in this area, especially if there are under-represented groups among users of the scheme. For instance, we plan to commission a booster sample for our next Tracker Survey among BME groups, which will allow us to profile whether any parts of the community are less likely to complain at the first-tier, which we could then compare with the Legal Ombudsman's diversity data. We would like to work with the Legal Ombudsman to better understand the barriers facing these specific groups and consider action to enhance accessibility for them.
27. Also welcome is the commitment to help consumers enforce decisions. One of the frustrating aspects of schemes such as the small claims court is that obtaining a favourable verdict may just be the start of a drawn-out process to enforce it. We would welcome the Legal Ombudsman publishing data on enquiries it receives about this so stakeholders can see if this is an issue, although we accept that not all consumers in this situation will come forward.

There is much that ombudsmen can do in the business of dispute prevention; we encourage the Legal Ombudsman to learn from good practice elsewhere, including from public sector ombudsmen which have generally pursued this to a greater extent than their private sector counterparts.

28. Since the consultation was issued the Legal Ombudsman has announced its welcome decision on publishing decisions, therefore this understandably did not form part of its proposed activities in 2012-2013. We are pleased it is already engaging stakeholders on issues relating to implementation; the Panel looks forward to playing our part in this as the initiative is rolled out.

### Voluntary jurisdiction

29. The Legal Ombudsman's plans to explore its voluntary jurisdiction are extremely welcome. The Panel has a statutory role in relation to this – we have powers to make recommendations to the Lord Chancellor as an “interested body” under the Act. Our two organisations have discussed taking this work forward in partnership, subject to the outcome of this consultation exercise.
30. We commented on the role of redress in our response to the LSB's consultation on the boundaries of regulation. Ideally, all legal services providers should be subject to the Legal Ombudsman's jurisdiction. In addition to giving consumers access to fast and fair redress, this would act as a deterrent against poor practices and provide a more level playing field in the market as a whole. This situation would also be consistent with consumer expectations of regulation and would help to address issues around creative delivery models detailed in the OLC's last Annual Report. If consumers had access to the Legal Ombudsman, this would be likely to reduce calls to regulate firms in a more comprehensive fashion. Indeed, the proposed EU Directive would give consumers the right to complain to an ADR

scheme about any trader, although member states are left to decide whether to require traders to participate.

31. Of course, the Legal Ombudsman cannot compel providers; it is for the LSB, and, ultimately, the Lord Chancellor, to decide the appropriate boundaries of regulation. However, a voluntary jurisdiction offers a helpful alternative or stop-gap en route to regulation. The value of this is being shown in the area of will-writing; it will be a long time before regulation can be introduced (due to constraints imposed by the Act) but a voluntary jurisdiction would at least give consumers the opportunity to access some after-the-event redress sooner. A voluntary jurisdiction could potentially have a wide reach into many areas of legal activity; in a competitive market it should be attractive to any business wanting to signal its commitment to consumer protection.

### Q7. Do you agree with our approach to setting our budget for 2012-13?

32. We have no comment on Question 7.

### Q8. Are there any other points or issues you wish to raise in relation to this Strategy and Business Plan that haven't been covered in your response to the other consultation questions? Have we missed anything? Is there anything you disagree with? Please give your reasons.

33. The ABS reforms enable businesses to deliver bundled legal and non-legal services in one-stop shops that reflect the reality of consumer life. Such convergence, also seen in other parts of the economy, cuts

across structures of regulation in which there are separate regulators and redress mechanisms in individual markets. This is confusing for consumers as they may have to contend with multiple redress schemes, each with its own rules and systems, in what appears to them as a single service, e.g. moving home. There is welcome work behind-the-scenes to promote co-operation between ombudsman schemes, but it is arguable that such measures will only ever 'paper over the cracks'. The EU Directive may give life to so far muted discussions on more radical options, such as a single portal or even mergers between schemes. Some key differences in approach create barriers, such as regulation of activity in financial services as opposed to regulation of entity in legal services. Legal services are at the vanguard of multi-disciplinary practice. As such, there is an opportunity for the Legal Ombudsman to take a lead role in stimulating debate around, and shaping solutions to, these challenges.

**January 2012**