

Consultation response

Legal Ombudsman: 2015-2017 Draft Strategy and budget

Overview

1. The Panel's report on legal services in 2020 contains relevant insight for the Legal Ombudsman. Self-lawyering, use of technology, entry by major brands and market consolidation, and a more commercial environment – could change the nature of consumer detriment and the providers that the Legal Ombudsman deals with. This will require updating the organisation's knowledge and skills.
2. Another expected trend is growth of the unregulated sector. This, combined with the ADR Directive, makes establishing a voluntary scheme even more urgent. The latest commitment to doing this lacks the specificity and urgency needed to realise our shared vision of a single redress scheme across legal services. Regrettably, in the absence of a voluntary scheme, from July 2015, we will need to encourage unregulated providers to subscribe to recognised schemes that already exist so that consumers have a vehicle for redress.
3. The commitment to sharing the learning from complaints is welcome. The Legal Ombudsman certainly has already made progress here. A dedicated strategy and work streams, coupled with improved IT capability, would strengthen this and ensure that the thematic reports have the evidence, rigour and impact achieved by other redress schemes.
4. In addition to the suggested priorities, we suggest focus in two other areas. Firstly, outreach to underserved population groups based on analysis of the current backgrounds of consumers using the service. Secondly, a continued and strengthened research and policy capability, as the Legal Ombudsman has much to contribute to the evidence base on legal services and redress policy.
5. While a continued focus on efficiency is appropriate, this must not of course compromise quality. An apparent fall in complainant satisfaction is a concern that would repay further investigation. There is scope to be more transparent and set a good example for others by publishing the results of its customer satisfaction surveys in full.
6. The intention to reconfigure the Legal Ombudsman's KPIs so these measure outcomes and reflect the wider impact the organisation is seeking across all its strategic goals is a good one. The Panel would welcome the opportunity to work alongside the Legal Ombudsman to progress this work to make sure the new performance framework addresses the key areas of consumer concern.

The proposals

7. The Legal Ombudsman is consulting on a draft strategy for 2015-2017 and budget.

The Panel's response

Q1. Do you agree with our overall analysis of the broader context for our strategy? Are there other issues that you think we should take into account?

8. We agree the broader contextual issues outlined are relevant – ABS, internet-based services and complex delivery structures; the impact of the ADR Directive; claims management companies and accountants coming within jurisdiction; and wider legal services regulatory framework reforms.
9. The Panel's report on legal services in 2020 was primarily aimed at regulatory bodies, but also contains relevant insight for complaint handling bodies. Based on this analysis, we would suggest these factors would be useful to consider in the Legal Ombudsman's strategic planning:
 - The rise of self-lawyering could lead to different types of complaint and raise difficult issues of judgement. Unbundling, for example, separates a package of legal services into parts, and the client and provider agree to what parts of the package the provider will deliver. This promises many benefits for consumers, but could also lead to disputes, for example a lack of clarity about who does what, or oversights by the provider due to the on-again, off-again nature of the service
 - A more commercial environment and increased use of technology to deliver legal services are likely to create new types of detriment. We do not say that the market will become more or less risky, but the pattern of risks will differ. Like regulators, the Legal Ombudsman will need to develop the knowledge and skills to deal with the different types of problem that consumers may encounter
 - Consumers used to accessing data on provider performance in other parts of the economy will demand the same in legal services. The Legal Ombudsman can help consumers to become more empowered, through making better use of information it currently publishes, and potentially publishing a wider range of complaints data at provider level. There will also be opportunities to work more closely with intermediaries such as comparison websites to raise public awareness of the Legal Ombudsman
 - Expected trends such as entry by established brands from other sectors and market consolidation will change the types of businesses that the Legal Ombudsman will need to engage with. Consolidation and technology could also increase the possibility of mass complaints from groups of consumers affected by the same problem
 - The unregulated sector is set to expand making it more urgent than ever for the Legal Ombudsman to press ahead with a voluntary scheme. The ADR Directive will create incentives for providers to subscribe to a redress scheme, but the longer it takes to establish a voluntary scheme, the more likely it will be that the unregulated sector turns to the residual

scheme or elsewhere to operate redress schemes on their behalf

Q2. Do you agree that we have identified the right priorities to focus on over the coming year? Are there other priorities that we should consider?

10. Each of the priorities – improving analytics capabilities to improve standards internally and in the sector; taking on complaints about claims management companies and accountants; finding new and better ways of doing things, including potentially creating a voluntary scheme; and engaging with stakeholders and with wider debates on the future of redress – are welcome.
11. The commitment to share the learning from complaints feels stronger than in any of the previous strategies. This is very positive, but a dedicated strategy to underpin this objective that includes a series of work streams would strengthen this. Improved IT systems should bring much needed improved intelligence about both those complaints handled and outside the Legal Ombudsman's boundaries. There have been welcome initiatives during 2013-14, such as the thematic reports. However, perhaps due to limited analytics capabilities, these have felt light on detail when compared to those of other ombudsmen. The impact of the Financial Ombudsman Service's report on payday lending, or indeed some of the special reports by ombudsmen operating in the public services arena, are what the Legal Ombudsman should aspire to.
12. The Legal Ombudsman has embraced the open data agenda by making the names of lawyers and law firms who are subject to ombudsman decisions available in a reusable format. The organisation could go further by publishing detailed statistical and potentially descriptive information about individual cases in such a format so that it can be analysed by researchers and others. Such an open approach would enable more value to be extracted from the data than if just the Legal Ombudsman could access it.
13. It is concerning that the Legal Ombudsman cannot commit further than '*potentially establishing a voluntary scheme for unregulated service providers*'. It is unclear whether this reflects reticence on its part or other obstacles that it has not explained. Previous strategies have made similar commitments, but there has been little real progress to follow and now there is more urgency. The Panel is instinctively sympathetic to the Legal Ombudsman's desire for a coherent redress system where it would handle all legal services complaints – in the regulated and unregulated sectors alike. However, once the ADR Directive is implemented in July, the Panel, and others, will be left with little choice but to encourage unregulated providers to sign up to an alternative scheme if the Legal Ombudsman is unable to handle their complaints for the foreseeable future.
14. There are other jurisdictional issues not covered in the strategy. The Panel has been working with the Legal Ombudsman on the issue of third party complaints for some time. In November, the OLC took the view that there is scope to provide access to redress for such complaints in clearly and tightly defined circumstances. The OLC has commissioned further work and

promised an update in July. While we know that work on other jurisdictions will place heavy demands on the Legal Ombudsman in the coming year, we look forward to continue working with colleagues on third party complaints and feel they should be included in the strategy.

Q3. Do you agree that we should retain our existing four goals?

Q4. Have we clearly identified what each of our goals mean? Are we focusing on the right things to deliver them?

15. The Legal Ombudsman proposes to retain its four existing priorities, as follows:
 - To continue to improve our efficiency
 - To implement agreed changes to our jurisdiction
 - To help create an improved legal complaints handling system
 - To disseminate what we have learned more widely
16. These four priorities remain appropriate and it is clear to us what the goals mean.
17. Equality and diversity considerations have perhaps been underplayed, however. Recently the Legal Ombudsman has published more data on the backgrounds of complainants under its Equality Act duties. There is an opportunity to build on this by sharing your analysis of under-represented groups and detailing plans to address any gaps. Last year the Panel published a guide on identifying and responding to consumer vulnerability and suggested that the Legal Ombudsman both use this internally and

consider a thematic review on complaints concerning treatment of vulnerable clients. We hope these ideas will be considered as options for the year ahead.

18. A continued focus on improving efficiency is, of course, appropriate. The Panel's benchmarking report identified reducing unit cost as a priority area and it is pleasing to see progress here. However, as the Legal Ombudsman acknowledges, greater efficiencies must not compromise quality. An area of concern is declining satisfaction among complainants. This on the surface appears driven by the resolution of fewer cases in the complainant's favour. While we would expect to see some correlation between service satisfaction and complaint outcome, our benchmarking report identified this is very stark at the Legal Ombudsman compared to other redress schemes. The nature of legal services complaints may explain some of this difference, but this makes it more important for the Legal Ombudsman to work hard at the way it communicates both the process and case decisions to the parties. This also means that to maintain public confidence the Legal Ombudsman should periodically seek external validation of the fairness of its processes and decisions.
19. The Panel read the independent report on ADR models prepared by Queen Margaret University with interest. We have previously pointed to the need for radical thinking if the Legal Ombudsman is to become a viable commercial proposition for the unregulated sector in a competitive consumer redress landscape. A detailed consideration of these issues goes beyond the bounds of this consultation exercise. However, it is

important that the Legal Ombudsman consults fully on its proposed options. Any changes should be made for the right reasons. For example, as we note in our benchmarking report, informal resolution should reflect what consumers expect, for example in the way of fair process and communication, not just respond to unit cost pressures.

20. The Legal Ombudsman has made an important contribution to improving the evidence base on legal services regulation and consumer redress more widely through the research from academia and others it has commissioned. There continues to be a need for this work and the Panel would welcome the opportunity to commission research in partnership with the Legal Ombudsman, as we have done to good effect in the past. Building on the two points above, the Legal Ombudsman has agreed to commission research in partnership with the Panel on the fairness of decisions and to test ideas for new service offerings.

Q5. Do you agree that the assumptions and risks we have taken into account in setting our proposed budget are sensible and appropriate?

21. It is unclear why the Legal Ombudsman expects activity for its core legal jurisdiction to reduce. Our Tracker Survey suggests the proportion of the population which has used legal services in the last two years has stayed fairly constant over time, while ONS data shows increased consumer spending on legal services. A decline in complaints about cases funded via legal aid may well be offset by an upturn in the conveyancing market. The reduction in volumes which the

Legal Ombudsman is experiencing could be for a wide variety of reasons and deeper analysis of this would be helpful.

22. We agree that managing the extension to claims management companies and the IT changes will be the two key new risks, in addition to ongoing risks stated in previous strategy documents. More generally we would have liked to see more information about planned measures to mitigate the risks identified in the strategy.

Q6. Do you agree that the KPIs we are proposing for 2015-16 are the right ones?

23. The Panel took part in discussions on the original set of KPIs. Now the organisation is firmly established these initial KPIs feel a bit simplistic and we agree that they should be reconfigured for the future. We would like to engage with the Legal Ombudsman as it develops these. Our preference is to make detailed suggestions at this stage rather than set out our ideas now, but we make some initial points below.

- **Timeliness** – from July, ADR schemes will be expected to resolve all complaints within 90 days of the complaint file being complete. While the Legal Ombudsman will wish to continue to set its own challenging timeliness targets over a series of time intervals, it should also report against this measure
- **Quality** – the current indicators feel light on quality and place too much weight on user perceptions. Although user views are an important part of this, we would

expect to see internal checks on quality incorporated within this KPI set

- **Fairness** – the data suggests that user perceptions of fairness of decisions are more closely tied to case outcome than in other schemes. While the nature of legal services may help explain this, things can be done to reassure users who lose that they have received a fair hearing. While setting targets for case outcomes would risk creating perverse incentives, we consider there is scope to introduce a sophisticated indicator around user perceptions of fairness
- **Diversity** – attracting a diverse user base should be a key priority. While it may be inappropriate to set targets here (not least as this will depend on how well first-tier mechanisms work), this is at least an important area to monitor. Similarly, it is important to monitor any signs of discrimination in decisions (we do not suggest there is a problem, but there must be external vigilance)

24. More generally, the Legal Ombudsman should be a beacon of transparency on its performance to maintain public confidence. For example, it has not published the full reports of its customer satisfaction survey for 2013-14, but instead referred to specific results in its annual report and posted overall satisfaction rates on the website. This is an era where full transparency is expected of public bodies. As a complaints handling body, the Legal Ombudsman should set an example for the sector.

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