



Minutes – Legal Services Consumer Panel meeting

Date: 10 November 2021

Time: 13:00 – 17:00

Venue: hybrid meeting - online and in person

Present:

Sarah Chambers	Chair
David Abbott	Member
Paul Crook	Member
Liz Owen	Member
Mark McLaren	Member
Adam Cooper	Member
Lisa Davis	Member
Lola Bello	Consumer Panel Manager
Heidi Evelyn	Consumer Panel Associate
Paul Philip	Solicitors Regulation Authority (Item 7)
Paul McFadden	Legal Ombudsman (Item 8)
Sandra Strinati	Legal Ombudsman (Item 8)
Helen Phillips	Legal Services Board (Item 9)
Matthew Hill	Legal Services Board (Item 9)

Item 1 – Welcome and Apologies

1. The Chair opened the meeting and welcomed those present online and in person.
2. No apologies were received.

Item 2 – Declaration of Interests

3. None
4. All Panel members recently updated their declaration of interests. They have now been updated on the LSCP website.

Item 3 – Minutes of March meeting

5. The Chair presented the minutes from the 15 September 2021 meeting which had been agreed via electronic correspondence.

Item 4 - Matter arising

6. All matters arising were acknowledged.

Item 5 – Chair’s report and members’ updates

7. The Panel discussed the Chair's report. They commented that it would be nice to have more information about how the budget increase of £3.2 billion for the Ministry of Justice would be allocated, and in particular how much of this money was to be put into free legal advice.
8. The Panel also discussed requesting funds from the LSB to do an additional module in the Tracker Survey, as we did last year when segmentation was explored. Possible areas that would be useful to look into include complaints, and how remote service delivery compares to face-to-face legal services.
9. The Consumer Panel Chairs held a special meeting on insurance and wanted to bring together a group of experts in the insurance market but it is proving difficult to identify experts with in depth knowledge of the PII market. Adam thought he might be able to ask an economist from CMA to sit in on a meeting. Paul suggested that Hiscox (large insurance company), who deal extensively in PII, might be able to provide some information. Mark might be able to identify someone from ABI who would have a good idea of what the market looks like.

Action: Secretariat to enquire as to whether there is funding for an additional module for the Tracker Survey

Action: Secretariat to follow up with Panel members to find someone with expertise in the insurance market

Item 6 – Project updates and consultation responses

10. The Chair noted that there were many important consultations since the last Panel meeting and thanked the secretariat and Panel members for contributing to the many substantial responses that were submitted on behalf of the Panel.

Item 7 – Update from the Solicitors Regulation Authority

11. The Chair thanked Paul Philip, CEO, for coming to provide an update on current issues. The Panel welcomed the pilots on quality indicators and unbundling. Paul said the SRA wanted to put more information out there on what types of quality indicators would be helpful to consumers for early adopter solicitors. The pilot, which also involves the BSB, is ongoing until next February. He acknowledged this is the beginning of a journey.
12. The Chair welcomed the SRA's market research on segmentation and discussed opportunities for sharing the learnings, findings and data across the sector. Paul noted that it was becoming easier to collaborate with other regulators and made clear that the SRA were committed to doing so. He felt that technology is a good issue on which to collaborate, and the regulatory research forum is a good way to talk to others about what research they are doing.
13. Panel members expressed concern that sometimes regulators are more attuned to the profession than to consumers. The Panel explained they are currently working on a consumer-focused regulation project. Paul invited the Panel to come to Birmingham to talk to their senior line managers as well as the wider team about consumer-focused regulation, what is deficient in the SRA's processes and projects, and what the SRA can do about it. The Panel said they would be happy to do that.
14. During the pandemic, the SRA has tried to talk to solicitors about how things were going and the overall message was that legal services were very resilient even though court closures had caused some problems in some areas such as immigration, criminal and family law. The more significant concerns are around the availability of legal aid and

continuing uncertainties about the implications of Brexit. The big firms have increased profitability, but the smaller firms are just keeping their heads above water.

15. Over the last two common renewal dates, even smaller firms are still procuring adequate PII cover, though it is costing more. But there may be questions about whether the insurance squeeze will accentuate the advice desert problem in the long run, if some firms exit the market or narrow the scope of their activities. Last year the problem did not manifest itself as much as expected, and there were not any fewer firms overall. Paul advised that Chris Handford is the expert on PII and SIF at the SRA.
16. The Chair noted that Panel members will be meeting with the SRA Policy team on SIF in December but still wanted to stress the importance of working with more people who have insurance expertise and sharing the data available so that stakeholders can properly evaluate the options. Paul said the SIF scheme have the data and the SRA has commissioned a report from actuaries and plan to share it; he didn't think the Panel would be disappointed with the information to be put into the public domain. The SRA's view is that the scheme has insufficient resources to continue, and the Board is concerned that any demand for a levy to allow it to continue might fall foul of the proportionality principle.
17. Paul felt the most significant legacy from his tenure at the SRA will be the introduction of the SQE; over 1100 students had just sat the first sitting and the results of the assessment will be published. While there will be comparisons on how many pass, and statistics on diversity, the big change is that the SQE2 will for the first time require students to be graded on the skills (not just the knowledge) that a solicitor needs.
18. Paul also told the Panel the SRA will soon go out to consultation on financial penalties and their place in the regulatory scheme. Currently, a traditional law firm can be fined a maximum of £2000 but an ABS can be fined up to £2.5m. The regulatory outcome should be proportionate to how large the firm is. There has been a rise in cases relating to inappropriate behaviour inside and outside the workplace and the SRA has not been happy that very unacceptable behaviour has frequently resulted in fines rather than suspension. The SRA would also like the authority to assign higher fines to deal with some issues and therefore reduce the current backlog at the Solicitors Disciplinary Tribunal.
19. A Panel member asked about Paul's views on quality standards, specifically in advocacy and what work the SRA will do on these ongoing competence issues. Paul explained that the SRA had stopped CPD points as a proxy for learning five years ago and will start to look at re-validation. They will be looking at the regime for being accorded Higher Rights of Audience but agreed that there were also problems in the lower courts that cause client detriment, and where currently no formal assessment is needed. Although there is plenty of anecdotal evidence, there is very little information available on the quality of advocacy in any of the courts, because the bench generally do not report the problems they encounter. Paul felt the SRA should explore what else could be done but emphasised the need for a proportionate response that does not unnecessarily increase bureaucracy.
20. Paul felt that the problems at LeO did not appear to be being tackled and resolved fast enough. The SRA gets lots of splashback from what is happening at LeO but has not had any recent discussions with them about mutual casework or what can be done to change things to correct recurring problems. Paul recognized it was the Panel's place to keep pushing the boundaries for more improvement for consumers in the sector.

Action: Secretariat to investigate setting up a Panel visit to the SRA next year

Action: The Panel will put in a formal response to the SRA's consultations on financial penalties and on SIF

Item 8: Update from the Legal Ombudsman

21. The Chair welcomed Paul McFadden, Chief Ombudsman and Sandra Strinati, Chief Operating Officer to explain where they are in implementing the new strategy at LeO. Paul said they were doing a lot of stakeholder engagement beyond the business plan and budget consultation event planned for the end of November.
22. The Chair explained that the Panel was most interested in hearing about what LeO's plans look like from a consumer perspective. Specifically, how long will it take for a consumer to go through the whole process and how are they treated when doing so? There seem to be gaps in some of the information LeO has provided. What does the customer journey feel like? Most importantly, what is the customer journey time from start to finish (for low, medium and high complexity cases)?
23. Paul stated that the influx of cases in the Pre-Assessment Pool (PAP) was outside their control. The oldest of the current low complexity cases would have come to LeO in February 2021. Because of the large size of the PAP, the overall numbers for how long the total customer journey is would have gone up. Paul said they would get the figures to the Panel and try to show some efficiencies.
24. Panel members asked whether the PAP was really outside LeO's control or whether there was some discretion in taking some cases out of the PAP. Paul felt that they are looking at proportionality carefully but they are experiencing challenges that they are trying to address. LeO has been working on the PAP and trying to achieve early outcomes between consumers and service providers in order to remove them from the PAP to reduce the backlog for the investigators.
25. The Chair asked about how imaginative and innovative LeO is being regarding recruitment in order to find the broadest pool of candidates possible. It was acknowledged that if recruitment and retention do not change soon, there will be bigger problems down the line. Sandra said that LeO had done three rounds of recruitment and used current investigators to help shape the content of recruitment advertisements; they had also tried to target particular recruitment markets. They have now partnered with an MOJ framework organisation who will assist them in administering the recruitment. Given that there is a saturated market in LeO's local area, they will advertise on a national basis and provide the choice of flexible hours, which may make LeO a more competitive employer in certain areas.
26. Panel members asked about whether LeO could employ people interested in spending some time with LeO while completing the practice element of the SQE, as they are already trained legally and could therefore hit the ground running. Another Panel member asked whether contracting out some of the work to temporary workers could really help reduce the PAP. Paul acknowledged that many other ombudsman schemes have done this and said they are engaged with the MOJ about removing the legal ban on this. The legal advice over the years has been that it is not allowed under the Legal Services Act. Panel members also asked about remote working as experience since the onset of COVID had demonstrated how practicable this form of working could be, and this could align with LeO's need for further recruitment. In addition, many lawyers were retiring early and may be another potential pool of applicants.
27. Panel members noted that to make a real difference, LeO might have to break the "first come first served" rule in order to do a quick evaluation up front and stream cases

appropriately. This might help with results and morale. Paul asked that the Panel include these thoughts in its consultation response because LeO agreed that this rule was hindering efficiency. He also recognized that there is a correlation between reducing the backlog and the customer journey time.

28. Panel members also noted that retention requires a cultural change and so a new approach to induction processes and training may be needed. Sandra explained they are putting resources into these areas because any amount of recruitment will not help if the attrition rate remains very high. LeO has developed a totally new approach where new people are assigned mentors and they keep the whole cohort that started together working alongside each other so they feel part of a team (whether they are working remotely or not). Now some, but not all, new starters are outstripping performance targets. LeO is truly trying to engage with staff as much as possible. Sandra said they did annual staff surveys and will share the results of the one being done in December 2021 and the year before.
29. Paul also confirmed that encouraging sector-wide improvement based on the Ombudsman's learning from their work has been limited in recent times due to lack of resources, but they would be moving to more transparency over the next year with more high level case data being published. The Chair agreed this is important, and the Panel had for a long time advocated for publishing ombudsman decisions in full. Paul welcomed further engagement on this point.
30. The Chair outlined how the Panel found it hard to choose between the options in their Budget consultation without data on the expected difference each would make to the customer journey time in days or experience, especially for vulnerable consumers, even if some estimates are hypothetical or include a range of outcomes. Paul noted it was hard to put the balance of choosing different routes into figures. Panel members noted that when bidding for increased funding to deal with the backlogs, one just has to estimate numbers even though it is difficult and they could be wrong. Paul felt it would be very helpful if the Panel could put these thoughts into its consultation response pointing out which measures are important for LeO to consider.

Action: Secretariat to follow up with LeO on getting figures for customer journey times as well as data from staff surveys as promised

Action: The Panel will put in a formal response on LeO's business plan and budget consultation

Item 9 – Update from the Legal Services Board

31. The Chair welcomed Helen Phillips, Chair and Matthew Hill, CEO to the Panel meeting. She also explained that we had had a discussion with LeO already today and noted that its performance still needs a great deal of improvement. She acknowledged that the current ombudsman scheme is a Rolls Royce system that takes long and costs a lot and we may need to look at what is really needed. The Panel was interested in what alternatives the LSB was looking at.
32. Helen agreed that there was confidence in the LeO leadership and Board but given the latest numbers, the LSB remains concerned. LeO had a 14% increase in budget but one year later, things have not improved significantly. They now have some proposals on scheme rules which the LSB welcomes as a small part of the solution.
33. Matthew pointed out that the Legal Services Act provides for a scheme that resolves complaints quickly and with minimum formality, yet an ombudsman scheme is formal

and slow. Matthew noted that the time may be right for consideration of what could work alongside the Ombudsman e.g. a different type of system for some types of cases such as ADR. Government guidelines for resolution by ADR is 90 days and this has not proved possible for LeO. Currently, low complexity cases are waiting 8 months just to be triaged. The Mayson and CMA reports advised that redress should be broadened to the unregulated sector, but this can't be achieved without change. ADR could involve third party providers commissioned by LeO and there are also alternative hybrid models. The question is whether (and in what circumstances) timeliness is worth sacrificing to achieve the high quality of an ombudsman investigation. The Panel agreed that these were important questions to be explored.

34. The Chair noted that legal services consumers are currently under-served in two ways; first those who have access to LeO receive a slow service; and second, consumers of unregulated legal services have no access to redress at all. Both are equally important access problems, so the Panel (and LSB) might want to consider alternatives that include redress for all consumers of legal services.
35. Matthew felt that one of the main drivers to look at alternatives was that access needed to be broadened; all alternatives will have to be vigorously tested. But there should be agreement on what good looks like in terms of time and quality. Proportionality is important because these complaints are about service, not about misconduct or criminality. The Chair thought improvements may still be made at LeO but additions to the system may be needed rather than alternatives; the Panel would really like to be involved in discussions going forward. Matthew agreed the Panel's involvement was important.
36. On SIF, the Chair explained that the Panel had not been happy with the process so far and with the lack of data being made available. Helen explained that her thinking had changed on SIF when she realized that the greatest benefit of SIF is for retired solicitors, not users, and there has been no transparency on how much it will cost consumers and how it might affect unmet legal need. Matthew felt that it is all about trade offs between protection versus access; it is a luxurious system of insurance that does not exist anywhere else. Everyone needs to know how much this will cost. Matthew explained that the LSB is working on the PII review and, as part of this, they will explore this trade off of protection versus cost from the viewpoint of consumers.
37. The Chair noted that less protection for high street solicitors could cause them to exit the market (or particular segments of it) and consequently affect access in other ways. Matthew felt that SIF indemnifies solicitors and so it is not like a compensation scheme. The aim is to identify the actual numbers regarding how much it costs, and on the effects of the cost. The LSB will be looking at SIF, compensation schemes and PII in this way.
38. Panel members raised the point that the legal sector is different from most other economic sectors because of the significance of trust: most consumers don't understand legal problems and there can be long range fallout from how a solicitor or other legal advisor tackles the problems. The Panel felt that these questions must be taken into account in the research.
39. The Chair felt there is still a decision to be made on whether or not SIF should continue, or whether a hybrid model should take its place. Helen suggested that we may need to think about the various different compensation pots available and how they relate and whether they are enough. With architects, when a house falls down, a consumer has to resort to PII. The £20m left in SIF is not sufficient because no third party will take it on at that level. Matthew noted that the funds in SIF were raised by solicitors and the

SRA was invited to administer it on The Law Society's behalf so it would have to be returned to them.

40. The Chair asked about price transparency and quality indicators. Matthew said that with the exception of the Bar Standards Board, the regulators had made significant moves and would have something in place by next year. Both acknowledged that the SRA was playing a helpful role in moving discussions forward between regulators.
41. Matthew commented that lots of questions were being asked by the MOJ on behalf of the new Lord Chancellor. Lord Wolfson (junior Minister at MoJ) is very active and interested in LeO. There was no news yet regarding the LSCP's new Panel member.

Item 10 - Draft Agenda for 16 February 2022 meeting

42. The dates for the 2022 Panel meeting will be agreed imminently as there have been some conflicts. Before the next Panel meeting, we will have our Away Day in early January offsite.

Item 11 – Any Other Business

43. A lay representative of a LeO complainant has written to the Panel to request advice as he has been turned away from LeO and the Family Courts when trying to find out how to handle the confidentiality of a complaint about legal services concerning a family law case involving domestic violence and children. The Panel agreed the Secretariat would get a point of contact from LeO and pass it on to the lay representative.

Action: Secretariat to liaise with LeO and reply to the person making the inquiry