Sent by email only to consultation@legalombudsman.org.uk

13 December 2024

Consultation Response to the Office for Legal Complaints' Draft Business Plan 2025/26

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the OLC's business plan and budget for 2025-26.

The Panel would like to commend the Office for Legal Complaints (OLC) for a well-considered business plan, containing the requisite information and analysis needed to help us engage meaningfully.

We would also like to thank the Legal Ombudsman (LeO) senior leadership team for their energetic engagement at various levels. The Panel attended an insightful stakeholder event organised by the LeO to discuss the business plan, and we also welcomed colleagues from the LeO to our Panel meeting for further discussions on the plan. These opportunities allow us to play our critical-friend role effectively.

Overall, the Panel supports the OLC's business plan for 2025/26. Whilst we do not consider ourselves best placed to delve into the finer details on its budget, we do have other comments, pertaining to other areas, which we believe will strengthen and enhance the plan set out by the OLC.

Complaints handling is failing consumers

The context for focusing on sectoral improvement of first-tier complaints handling is well argued and evidenced. For many years the Panel itself has noted the need for regulators to do more to support providers in this area.

There is a growing demand for LeO's services exacerbated by legal services providers inadequacies in handling first-tier complaints. The consultation document refers to evidence from the Panel's own Tracker Survey showing high numbers of silent sufferers (those who are dissatisfied with their service, but do not make a complaint). Consumers also lack trust in providers' ability to handle complaints properly, and without prejudice to their matter.

The evidence and analysis presented by the OLC aligns with our long-standing findings. While we acknowledge the work the Legal Services Board (LSB) has done to ensure that providers address the deficiencies with first-tier complaints handling[1],

[1] The LSB has produced a body of work emphasising that approved regulators must establish clear, accessible and efficient complaint management processes. The LSB encourages transparency, timely resolutions and effective communication with complainants while upholding high service standards.

we have also said that the LSB's intervention does not go far enough[2] in tackling the difficulties consumers face with making complaints.

As far back as 2016[3], evidence gathered by independently commissioned researchers showed that information about how to make complaints was not effective. Consumers questioned its prominence in the Client Care Letters (CCL) and suggested alternative means of conveying this information, for example, including it in a separate leaflet that consumers could be signposted to.

Consumers found most of the CCLs evaluated to be complex and difficult to read. Initial impressions were often that they were unnecessarily lengthy and included generic information. When prompted to read these communications, consumers tended to find it difficult to pick out the key information due to a lack of signposting, dense bodies of text, unfamiliar terms, and heavily caveated language. Worryingly, these concerns were heightened for the most vulnerable consumers, for example those with low literacy levels, visual impairments, or for whom English was a second language.

It is an indictment on all the regulators that nothing substantial was done to address the findings of this research, which was jointly commissioned by all the regulators and the Consumer Panel.

A history of inaction

In response to the findings of the CCL research, our Tracker Survey findings and other credible evidence, we made a strong case for standardising complaints information, post-consumer testing. In 2022, we published a paper[4] calling for standardisation of complaints information. In our 2022 paper, we referred to regulators' history of inaction by stating:

Since the publication of the report (Client Care Research), nothing has been done by regulators to improve complaints signposting or to design an effective letter, using insights from behavioural science and testing to improve the information. Possibly as a result of this, the number of consumers stating that they do not know how to make a complaint is not falling. We know that regulators outside of legal services have adopted approaches which draw on behavioural science to design letters and templates to ensure that intended outcomes are achieved.[5]

It remains our view that information on first-tier complaints, including an indication of when consumers may escalate to the Legal Ombudsman, should be standardised, so that all consumers across all the regulated communities receive the same information, in the same format and with the same words. We have consistently said that allowing each provider to design their own form or words and/or template is not effective.

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[2]https://www.legalservicesconsumerpanel.org.uk/blog/first-tier-complaints-more-needs-to-be-done
[3]https://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Client%20Care%20Letters%20Research%20Report%20-%20FINAL%20201016.pdf
[4] https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/10/22.10.19-Standarisation-of-Consumer-Information-in-Legal-Services.pdf
[5] *Ibid*.

Despite the evidence available, front-line regulators have not moved towards collective standardisation or even standardisation within their respective regulated communities. This is not satisfactory.

LeO offers regulators a path to redemption

We are pleased to see the LeO call for and offer practical support towards achieving standardisation. More importantly, the LeO is offering to help devise a set of templates, forms of words and anything else within its expertise to achieve this goal. We would like to stress that supporting service providers in this way can also encourage them to take a positive approach to complaints as helpful feedback that can help providers improve relationships with consumers. This is good for business, and it may also highlight areas that enhance their professional skills. The offer from LeO now needs the full support and backing of front-line regulators and a stronger prescription by the LSB. Regulators must tackle this worsening situation. Consumer focused and responsive regulation demands that deficiencies such as this, spanning many years, are met with appropriate regulatory intervention.

We commend the LeO for this move, we fully support it and welcome any opportunity to contribute to its development.

Options for future funding structure and polluter pays approach

The Panel considers it appropriate that the LeO reviews its case fees, alongside incentives to prevent complaints, unfairness and build an organisation with the capability to address future needs.

We note that the LeO plans to consult more specifically on any changes to its funding model. We will engage with this at the appropriate time. That said, our starting point is that cost must be free to consumers but also fair and transparent to providers.

The Panel supports costs that are proportionate, in this context, we agree with the principle that businesses that generate the most work should pay the most for LeO's services. Moreover, we would tentatively support the proposition that there should be differentiated case fees according to case stage.

At the heart of any change, the LeO should ensure that an improved model of funding adheres to other principles e.g. cost must be easy to understand, simple to administer and sustainable over time and without an incentive for LeO's service to reach a particular outcome.

The publication of Legal Ombudsman decisions

The Panel is pleased to see the publication of Legal Ombudsman decisions on the face of the consultation document. Transparency of this nature is expected of a modern and progressive ombudsman and LeO remains an outlier amongst comparable ombudsmen.

There is an undertone of reluctance in the draft that does not match the positive oral messaging we received from the LeO. Given that this has been on the table for close to 10 years and given that the OLC has consulted on this previously, we expected the LeO to outline a more insightful, considered and convincing path to achieving this goal, drawing on learnings and approaches from elsewhere.

We are disappointed that one or two regulators have queried the importance of fuller transparency in this area, arguing that thematic reviews or periodic insights will give them (regulators) better insights and intelligence. We strongly disagree with this position and emphasise that it need not be one or the other. Comparable ombudsmen do both; they share thematic insights and publish ombudsman decisions in full. As noted below, the publication of ombudsman decisions in full is extremely helpful to those representing consumers interests.

We have made the case for the publication of Legal Ombudsman decisions in full for many years, but we consider it important to summarise our arguments:

1. **Enhanced Transparency:** Full publication fosters transparency in the ombudsman's processes and decisions. It allows the public to see how complaints are handled, which can build trust in the institution and in the sector.

2. **Accountability:** By making decisions publicly available, ombudsmen can be held accountable for their judgments. This scrutiny can help ensure that they adhere to high standards of fairness and impartiality.

3. **Informed Public:** Public access to decisions helps educate citizens about their rights and the workings of the ombudsman system. It can empower individuals to seek redress and understand the processes involved.

4. **Precedent Setting:** Full decisions can serve as precedents for future cases. They provide guidance on how similar complaints may be resolved, contributing to consistency in decision-making. There is also tremendous value in consumers and their representatives knowing when it may be worthwhile making a complaint. We know that consumers are unfamiliar with legal services, therefore it may not be as clear cut when a matter had good grounds for a complaint. Showing where issues have been resolved will give more confidence that it will be worth their time and effort.

5. **Deterrence of Misconduct:** The knowledge that decisions are published can deter potential misconduct by organisations or individuals, as they are aware that their actions may be scrutinised by the public.

6. **Research and Improvement:** Researchers, policymakers, consumer groups and the ombudsman’s office itself can analyse published decisions to identify trends, systemic issues, and areas for improvement in the service.

7. **Public Confidence:** When decisions are made public, it can enhance public confidence in the ombudsman’s ability to address grievances effectively, thereby encouraging more individuals to come forward with their complaints.

8. **Encouragement of Best Practices:** Full publication can encourage organisations to adopt best practices in their operations, knowing that their actions may be evaluated publicly.

9. **Comprehensive Understanding:** Full decisions provide context and detail that summaries or partial publications cannot convey. This completeness can lead to a better understanding of the complexities involved in each case.

10. **Support for Victims:** For complainants, seeing their cases and decisions published can validate their experiences and provide a sense of closure, knowing that their issues are being addressed in a public forum.

The Panel is not supportive of some of the suggestions outlined in the consultation document. We do not support the redaction approach because it will be meaningless to consumers and their representatives. The Panel is open to the possibility of publishing summaries of Legal Ombudsman decisions within 18 months, if in turn the Ombudsman commits to full publication a year after it begins publishing the summary of decisions.

We hope the LeO finds this feedback helpful. Please contact Lola Bello if you have any questions pertaining to this consultation at lola.bello@legalservicesconsumerpanel.org.uk.

Yours sincerely,

Tom Hayhoe

Chair, Legal Services Consumer Panel