



Bar Council response to The Office for Legal Complaint's (OLC) Draft 2024-27 Strategy Consultation and Draft Business Plan and Budget for 2024/25

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Office for Legal Complaint's Draft 2024-2027 Strategy Consultation and Draft Business Plan and Budget for 2024/25.¹
2. The Bar Council represents over 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society.
4. The Bar makes a vital contribution to the efficient operation of criminal and civil courts and tribunals. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Question 1: Do you support the OLC's draft strategic objective for LeO's service and supporting aims? What would success look like to you as we move from 2024 to 2027?

5. We remain of the view that resolving complaints fairly and effectively, as timely as possible, and providing an excellent customer experience in the process should remain the key priorities of the Legal Ombudsman (LeO). This is vital for customers and legal professionals. Both reduced waiting times and an acceptable investigation pool (previously referred to as the pre-assessment pool) benefits

¹ <https://www.legalombudsman.org.uk/information-centre/corporate-publications/olc-strategy-2024-27/>

customers and legal professionals. They are also indicators of a well-functioning ombudsman. An effective ombudsman service provides reassurance to customers using regulated legal providers, that there is recourse where they remain unsatisfied by the first-tier complaints handling process.

6. In 2022 we expressed our concern that there remained long and, ultimately, unacceptable periods of time for processing complaints. We appreciate the progress made by LeO in reducing those wait times and resolution periods, and in charting this process via data available on its website² and in forums such as the Challenge and Advisory and Service Provider Group.

7. We note that it is predicted that by the end of March 2024 the average waiting time in the queue for cases that require investigation will be 170 days for all case complexities (50 days shorter than the 2022/23 average). We consider that this is nevertheless an unacceptably lengthy waiting period for those customers' cases to be resolved. We therefore urge the Ombudsman to prioritise efficient and effective complaints handling and to avoid diverting resource to the proposed second strategic aim. It is difficult to support financing a new workstream while backlog and wait times remain so high. As has been demonstrated, a range of internal and external factors can increase the number and complexity of complaints and slow the investigation process. The projected investigations pool size and waiting times are already vulnerable to increase. Diverting staff resource to other projects such as learning and insights runs the risk of jeopardising the key function of LeO.

8. LeO should, in our view, focus on the first strategic aim of resolving complaints fairly and effectively moving from 2024-2027. To achieve this, it is essential that further progress is made on reducing the investigations pool and waiting times for low complexity complaints. In our response to the 2022/2023 consultation, we recognised there were difficulties to overcome in reducing the pre-assessment pool to desired levels. Looking at the data available now³, this level remains unlikely to reach acceptable levels by 2024. Whilst we acknowledge the factors behind this (such as an increase in demand for the Ombudsman and staff attrition), these are issues that cannot be wholly unexpected. We note, for example, that the difficulty of staff recruitment and retention has been discussed on many occasions in the Challenge and Advisory Group meetings.

² <https://www.legalombudsman.org.uk/information-centre/data-centre/performance-data/>

³ <https://www.legalombudsman.org.uk/media/nfxlj14t/2024-25-business-plan-and-budget-consultation-final-v1-0-futura.pdf>, page 6

Question 2: Do you support our proposed plans for this first year of the strategy, 2024/25? Is there anything on your horizon that you think could influence demand for LeO's service?

We will deliver an efficient and proportionate service

9. We agree with many of the strategic aims outlined in the consultation document under delivering an efficient and proportionate service.⁴ In particular, we fully support LeO's commitment to resolving each complaint as informally as possible and at the earliest possible opportunity. As we have stated, it is vital to have acceptable waiting and investigation times, and for complaints to be resolved fairly and effectively for customer satisfaction and confidence levels, for legal service providers and for the reputation of LeO.

10. We were pleased to support LeO's recent changes to the Scheme Rules. Whilst the new Scheme Rules have not been in operation for long enough for their full impact to be felt, we urge the Ombudsman to assess this and publish its findings in due course. We are interested to learn more about LeO's ideas for further review of the Scheme Rules, with an intended focus on the case fee structure.

11. We would like to understand more of what is meant by "developing flexible systems and processes that support an excellent customer experience and enable us to gather richer customer insight." LeO has already, for example, updated the website and telephone systems to benefit customers, and we are unsure of what obtaining a 'richer customer insight' would involve and the meaningful value it would add to their experience.

12. Further information is needed on the aim put forward for LeO to be "engaging with and learning from other organisations". Whilst we can understand the utility in learning from other organisations, we would urge LeO to be cautious about adopting working practices from other organisations without due care and consideration of the effects on customers and legal professionals. As ever, while staff attrition and recruitment remain risk factors, LeO should be careful about diverting any resources away from its key duty of resolving complaints into other workstreams.

13. It is unclear what LeO intends to do under the aim of exploring technology, including AI, to help achieve value for money and an excellent customer service. If this includes a desire to digitise access to LeO, for example, this should be considered carefully. Further research and work is still needed to understand how consumers access and use services if a digital element is present. The Legal Services Consumer Panel added a new question about the use of technology in its annual report on 'How

⁴ OLC Draft Strategy, pages 4-5

Consumers are Using Legal Services' in 2023. In that report, "52% stated that they would trust legal services less if they could only access them digitally".⁵ Similar considerations may apply to perceptions of digital dispute resolution. Additionally, any privacy and data considerations should be at the forefront of any roll out of new technology which includes a component of AI.

We will give fair, high quality outcomes that make a difference

14. We agree with this aim as it feeds into the overall strategic objective of resolving complaints fairly and effectively, providing an excellent customer experience. We also agree that it is fundamental that every complaint receives a fair and reasonable outcome, and that all consumers and service providers feel that it is a fair decision. To this end, it makes sense to ensure that the quality assurance arrangements are proportionate and appropriate, and that customer feedback is drawn upon to inform improvements to the service.

We will be accessible to everyone who needs us

15. We agree with the areas of focus under this aim. We support the initiatives that help provide an accessible service to customers. We would be interested to know what has happened to the previously suggested idea of training vulnerable consumer champions to assist LeO complainants.⁶

Horizon scanning

16. In our response to the last LeO business plan consultation we queried if any work had been carried out on factors which may affect the number and types of complaints made to it. This could assist with resourcing for the first strategic objective. It is therefore encouraging to see some of the high-level risk factors articulated in the proposed business plan. We encourage LeO to consider further work to understand these factors in more depth.

Question 3: Do you support the OLC's draft strategic objective for LeO's impact and supporting aims? What opportunities do you see for strategic alignment and collaboration? What would success look like to you as we move from 2024 to 2027?

⁵ <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2023/07/How-consumers-are-using-legal-services-report.pdf>, page 36

⁶ <https://www.barcouncil.org.uk/static/c57dced8-31ac-41b8-b4d7bf36147970f2/Bar-Council-response-to-the-Office-for-Legal-Complaints-Draft-Strategy-and-Business-Plan-2023.pdf>, paragraph 10

Strategic objective for LeO's impact: LeO's independent voice and experience lead to improvements in legal services.

17. LeO is well placed to use the data and knowledge it gathers from handling complaints to drive improvements in legal services. It makes sense, for example, to use any customer feedback at LeO's disposal to inform and improve legal service providers' customer service. However, we are concerned about the appropriateness of implementation of the second strategic objective when there remains substantial work to be done under the first strategic objective.

18. We reiterate our view that the primary objective of LeO needs to be managing and dealing with cases efficiently and effectively. In our last consultation response, we recognised the improvements made by LeO in this regard, and said that 2024-2025 may be the time to start thinking about learning and improvement. However, LeO's backlog of cases has not been reduced as fast as anticipated. In these circumstances, we do not agree that a significant focus on these areas is appropriate at this time.

Question 4: Do you support our proposed plans for this first year of the strategy, 2024/25?

We will build LeO's profile and impact as an independent voice for improvement

19. We are concerned about the aim to "make greater use of our powers to publish Ombudsman decisions in the public interest – while delivering a plan to further increase the transparency and impact of LeO's decisions." As we have stated in previous years, LeO needs to be careful about embarking upon this course of action.⁷ We do not support a sharp focus on this area as it could be to the detriment of the primary objective of achieving satisfactory levels of case closures. We are sympathetic to the argument that publishing Ombudsman decisions could overall assist with reducing case levels. However, there is no evidence to support this assumption.

We will share learning and insights that help lead to better legal services for consumers

20. We agree with the overall aim of constantly ensuring that consumers receive the best legal services. We are however unsure that the priorities underneath this overall aim will achieve this.

⁷ For example, see paragraph 22 of the response to the Legal Ombudsman consultation on the Business Plan 2022-23: <https://www.barcouncil.org.uk/static/d1af903d-f4e1-4206-b2c598eb1f077d3c/Bar-Council-response-to-the-Legal-Ombudsman-consultation-on-the-Business-Plan-2022-23.pdf>

21. We would like to have greater understanding of the aim to be a “key strategic partner of the Legal Services Board (LSB) in driving better legal services.” There are very clearly defined functions of the LSB and OLC enshrined in the Legal Services Act 2007 (“the Act”). While the LSB is responsible for overseeing legal regulation in England and Wales, the OLC is responsible for setting up and running an independent ombudsman scheme. The Memorandum of Understanding⁸ between the LSB and OLC further defines the roles of each organisation. There is also an agreement on how the LSB and OLC will act in ways that are compatible with the regulatory objectives of the Act. It therefore seems unnecessary to have an aim of becoming a ‘key strategic partner of the LSB’ as there is already adequate statutory provision for cooperation.

22. We support the aim of “collaborating with others on learning, insight and transparency initiatives in the legal sector” to a degree. We are pleased to continue to collaborate with LeO on the Bar Council’s annual handling client complaints seminar. We would urge the Ombudsman to be cautious about increasing its work on “learning, insight and transparency” for the reason that this could divert resources away from the primary aim of handling consumer complaints.

23. As we have highlighted in a response to the LSB on First Tier Complaints⁹, LeO’s latest Complaints Information report shows that it is less likely for there to be evidence of poor service by Bar Standards Board regulated individuals when compared to the legal sector as a whole.¹⁰ Therefore, the limited number of complaints which are upheld by LeO reduces the level of analysis that can be undertaken with respect to barristers.

24. As we have stated to the LSB¹¹, complaints against individual barristers who operate either as sole practitioners or as self-employed individuals in chambers are less likely to reveal any systemic issues than those that are brought against large legal entities. Consequently, ‘learning and insight’ may be limited in its application to other barristers and practice areas.

We will use our experience to help legal providers improve their complaints handling

25. It is difficult to comment fully on this workstream without further detail of the services planned, for example, complaints handling audits. We query what this would involve, the cost and anticipated outcomes.

⁸ <https://www.legalombudsman.org.uk/media/qstosqx1/20171020-final-signed-mou-web.pdf>

⁹ <https://www.barcouncil.org.uk/policy-representation/consultations.html>

¹⁰ <https://www.legalombudsman.org.uk/information-centre/data-centre/complaints-data/>

¹¹ <https://www.barcouncil.org.uk/resource/bar-council-response-to-lsb-consultation-on-first-tier-complaints-november-2023-pdf.html>

26. In terms of work on first-tier complaints, as we stated in our response¹² to the LSB's recent consultation on this topic, we wish to see excellent complaints handling at the first tier, but we also want to ensure that additional requirements for the Bar are only introduced where there is evidence of a systemic problem. We are not aware of any significant issues with the way that barristers handle client complaints and have not had any indication from LeO that there are any systemic issues with the Bar's complaints handling mechanisms. We understand the reasoning behind this aim but would emphasise the diversity of the legal services community and that best-practice standards which might work for one part of the sector, may not work for another. As ever, a targeted approach is necessary.

Question 5: Do you support the proposed 2024/25 budget for LeO?

27. In the last consultation response, we were supportive of LeO seeking an inflation-linked budget increase. We accepted this increase as we recognised the wider economic factors at play and the importance of staff retention to delivering their plan. It is more challenging to fully endorse the proposed 6.95% increase because part of it is linked to delivering the second "impact" part of the strategy which we do not think should be prioritised at this time. We note that LeO has been awarded significant budget increases for the past three years (13% for 2021-22, 5.8% for 2022-23 and 9.6% for 2023-24) yet the backlog and investigations pool has still not reached an acceptable level. It must focus all efforts on effective and timely resolution of complaints and lowering the investigations pool to an acceptable level before considering new workstreams. This is particularly important when LeO is contemplating the possibility of a higher caseload and the additional strain on resources this would bring.

28. As referred to in our last consultation response, any proposed increase needs to be considered carefully because it is derived from barristers' practising certificate fees. As we stated, "Any budget increase is directly borne by them (barristers) and represents one of many regulatory costs. There is a risk that increases are ultimately passed on to consumers by practitioners raising their fees."¹³

Question 6: How might LeO's funding arrangements need to evolve over the course of the strategy – for example, what changes might be made to the case fee, and how can LeO's learning and insight programme be fairly and sustainably funded going forward?

¹² <https://www.barcouncil.org.uk/resource/bar-council-response-to-lsb-consultation-on-first-tier-complaints-november-2023-pdf.html>

¹³ <https://www.barcouncil.org.uk/static/c57dced8-31ac-41b8-b4d7bf36147970f2/Bar-Council-response-to-the-Office-for-Legal-Complaints-Draft-Strategy-and-Business-Plan-2023.pdf>, paragraph 19

29. A balance must be struck between universal funding of the LeO service by all regulated providers of legal services and the application of the “polluter pays” principle. Any proposals to case fees must be fully consulted on with the legal sector before any decisions are taken.

30. As well as thinking about new funding arrangements, LeO should be considering whether additional efficiencies can be introduced into the system to reduce costs.

31. As always, any new work must ensure that the efficiency and quality of the Ombudsman process is not compromised.

Question 7: Do you have any other feedback on the OLC’s draft 2024-27 Strategy and 2024/25 Business Plan and Budget?

32. There were a number of measures that LeO had considered in the last business plan consultation in 2022 to try to improve the experience and thereby the retention of its staff. We previously emphasised that LeO needs to ensure its working culture and non-salary related benefits (e.g. flexible working policy) make it an attractive place to work. Salary is just one of many factors that impact staff retention.

Bar Council

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For further information please contact:

Eleanore Lamarque, Policy Manager, Regulatory Issues, Law Reform and Ethics

The General Council of the Bar of England and Wales

289-293 High Holborn, London WC1V 7HZ

Email: ELamarque@barcouncil.org.uk