



**Bar Council response to the Office for Legal Complaints (Legal Ombudsman [LeO]) Draft Strategy 2023-24 and Draft Business Plan and Budget 2023/24 consultation paper**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Office for Legal Complaints consultation paper entitled “Draft Strategy 2023-24 and Draft Business Plan and Budget 2023/24”.<sup>1</sup>
2. The Bar Council represents approximately 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. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. 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: How has your level of confidence in LeO changed since this time last year? Has it increased, decreased or stayed the same?**

4. Our confidence in LeO’s ability to deliver on its plans has increased. LeO has made much progress, having managed to reduce the pre-assessment pool and reduce waiting times for low complexity complaints by changing the ways in which they handle complaints to create efficiencies. Additionally, they have rebuilt their team, their most valuable asset. Furthermore, earlier this year LeO consulted on and amended their scheme rules, an initiative which the Bar Council contributed to and supported. We were grateful that many of our suggestions were adopted.

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<sup>1</sup> Office for Legal Complaints Legal Complaints [Draft Strategy 2023-24 and Draft Business Plan and Budget 2023/24 consultation](#)

5. We value the high level of transparency and constructive engagement by LeO with the Bar Council via its Challenge and Advisory group and newly formed Service Provider group as well as at staff and office holder level. LeO has continued to be frank about what it has achieved and those challenges which remain. This engagement is welcome; it allows us to understand how LeO is performing and to have early sight of its plans to meet those obstacles. It also affords the Bar Council the chance to provide our perspective and to contribute to initiatives such as the scheme rule changes. Although the Service Provider group has just been established, we have been impressed by its efficacy and we hope it will help ensure the views and interests of legal professionals are visible to LeO. This is important as they are directly impacted by the Ombudsman's work in resolving complaints.
6. Despite LeO's strong performance over the last year, there remain significant challenges to reducing the pre-assessment pool (PAP) to the desired levels. The Ombudsman estimates that this group, comprising the pool of people waiting to have their complaints looked at for the first time by LeO, will only have been brought down to zero by March 2024. There is much work to do between now and then to achieve that. LeO remains vulnerable to staff attrition and external factors that may put this goal at risk. The Ombudsman acknowledges that the current average wait time is unacceptable. Wait times clearly need to be reduced insofar as practicable so that complainants and legal professionals can have complaints resolved swiftly and move on. There is no room for complacency.

**Question 2: Do you support LeO's plans under Strategic Objective One and Business Plan Priority One? Is there anything else the OLC should take into account in 2023/24 or further ahead?**

7. This area of work should be the key priority of LeO. It is vital that they reduce waiting times and the size of the pre-assessment pool to acceptable and manageable levels, for the benefit of complainants and legal professionals alike. These are both important indicators of its ability to function well.
8. We agree that LeO's staff underpin all its work and that they must be invested in and nurtured. The Ombudsman acknowledges that they now have the numbers of staff in place that it requires. We agree that they must ensure that those members of staff are trained, supported and motivated to perform their work effectively and consistently. We consider it critical to retain newer members of staff that they have spent time and resource training, in order not to lose this investment. The strategy detailed in the business plan seeks to achieve this. LeO will need to ensure that its working culture and non-salary related benefits (e.g., flexible working policy) make it an attractive place to work and develop a career.
9. We support the plans to seek opportunities to open an additional regional hub. Using existing MoJ estate for another hub is an efficient use of resources.

10. We are supportive of LeO's equality, diversity and inclusion (EDI) initiatives, which are important elements of their approach to attracting and retaining staff, and providing an accessible service to customers, including the idea of training vulnerable consumer champions.

**Question 3: Do you support LeO's plans under Strategic Objective Two and Business Plan Priority Two? Is there anything else the OLC should take into account in 2023/24 or further ahead?**

11. We supported many of the scheme rule changes that were consulted on earlier this year. We consider that they will make for a flexible, efficient and more proportionate complaints handling process. We agree with the importance of LeO monitoring the impact of the new rules on the number of complaints brought and the experience of complainants and legal service providers. This will help them to ascertain if any further changes are necessary or desirable. We agree that it will be vital for all stakeholders to be adequately informed of the forthcoming scheme rule changes in order that they can adjust their policies, processes, website content and client care letters to reflect them. We will gladly support the Legal Ombudsman to communicate the changes to barristers.
12. We welcome any further work to increase efficiencies, provided that the quality and fairness of the process is not compromised. LeO's initiation of quality assurance measures such as customer satisfaction monitoring will help achieve this.
13. The automation of the online enquiries form is encouraging because of the resultant saving of staff time. However, LeO should seek to ensure that there are alternative communication methods for people that find engaging with an online form challenging or impossible.
14. We note that the success of LeO's recruitment campaign has reduced the importance of pursuing outsourcing. If the outsourcing of non-investigative duties creates efficiencies without diminishing quality or compromising data protection then we would be supportive of it.
15. We have previously commented on the difficulty of navigating the LeO website and we are supportive of any measures to improve its accessibility. Any consequential reduction in the number of people contacting LeO prematurely, before they have first exhausted the complaints process with their legal service provider is also to be welcomed.
16. We support the Legal Ombudsman beginning to consider how the service should look and be run in 2024-25 by which point the recovery period should have ended.

**Question 4: Do you support LeO's plans under Strategic Objective Three and Business Plan Priority Three? Is there anything else the OLC should take into account in 2023/24 or further ahead? For example, what more would you like to see LeO do in this space?**

17. We agree that sharing insights from the complaints handling process is an important tool in helping improve customer service and consequently reducing the number of complaints made to LeO. We have benefitted for many years from LeO input into an annual complaints handling seminar we run. However, whilst LeO is in its final recovery year we think this work should take less prominence than the primary task of complaints handling. We think that 2024-25 would be a more suitable time to increase activity in this area. It is always helpful to understand the reasons that people complain about barristers and how barristers can best avoid complaints and resolve them when they do arise. It should also assist both the BSB and the LSB when considering changes in regulatory activity, in particular, to give context to the proper application of 'the better regulation principles'. This includes, importantly, that regulatory activities must be proportionate and targeted only at cases in which action is needed. Where LeO sees relatively modest, and/or reducing, numbers of complaints of a particular type or category this should cause the BSB / LSB to consider what reductions in regulatory activity should take place. We will continue to assist LeO to convey this constructive information to the Bar and the regulators.
18. We welcome the establishment of the Service Provider group and continuation of the Challenge and Advisory group and look forward to further constructive engagement through them.

**Question 5: Do you support the proposed 2023/24 budget for LeO?**

19. In the circumstances we do not object to the inflation-linked budget increase proposed. It is, however, vital that budget increases are kept to a minimum given the significant budget increases it secured in the past two years (13% for 2021-22 and 5.8% for 2022-23). Increases ought to only be sought where they are strictly necessary and justifiable. LeO's work is primarily funded by a levy imposed on authorised legal professionals, including barristers. Any budget increase is directly borne by them and represents one of many regulatory costs. There is a risk that increases are ultimately passed on to consumers by practitioners raising their fees. The 9.6% increase attributed to inflation is not ideal, but we recognise the wider economic factors at play and the importance of staff retention to delivering their plans.
20. It will be important to monitor the impact of the scheme rules on case fee income. The introduction of the new rules presents a good opportunity to look at the case fee model, including how early and pragmatic resolution of cases might be incentivised, and potential further targeting on the basis of 'the polluter pays', and we look forward to engaging with this in due course.

**Question 6: Is there anything else you think the OLC should take into account it finalises LeO's 2023/24 Business Plan and Budget and 2023-24 Strategy?**

21. It would be interesting to understand if LeO has done any work on what economic, health, political or social factors may affect the number and types of complaints made to it. For example, what, if any, impact the Covid-19 pandemic and barrister criminal defence related industrial action had. Similarly, whether LeO has noted any effect of an increased use of remote hearings. Such analysis would assist LeO in its forecasting and resourcing. However, any such work should not be significant in budgetary terms and the focus in the immediate future should be 'laser-like' on Strategic Objective One.

**Question 7: Once LeO is delivering a significantly improved service, how might it need to evolve to meet customers' needs and expectations? This will help shape the OLC's thinking as it starts to develop its new multi-year strategy.**

22. We would like LeO to consider how it can increase its resilience to shocks and stresses like those created by the Covid-19 pandemic, in order that it might avoid the accumulation of unresolved cases and unacceptable wait times again. Stability is important to maintain the confidence of the consumers and legal professionals that respectively use and are subject to the Legal Ombudsman.
23. Given that there have been some significant budget increases over the last few years to allow LeO to restructure its operations and reduce its complaints backlog, we would like to see consideration of how it can reduce its budget back down to pre-2020-21 levels in due course.
24. It would be helpful to see further analysis of how LeO thinks the new scheme rules will impact the number of complaints it receives and the complainant's journey through the Ombudsman and outcomes received, including for example the cost of, and time taken, to handle complaints from inception to resolution.
25. Once LeO's operations are back on an even footing we would support more work on strategic aim three, with a view to supporting legal professionals to reduce the number of complaints that are raised with LeO about them.
26. We remain opposed to the idea of the Legal Ombudsman having a role in the resolution of complaints from unregulated providers. Such work is outside its scope and blurs the lines between unregulated and regulated legal services providers. Further, unregulated providers do not contribute to funding the Legal Ombudsman.

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