



The Bar Council

Bar Council response to the Office for Legal Complaints Corporate Strategy 2020-23 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 (OLC) Corporate Strategy 2020-23 consultation paper.¹
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 (BSB).

¹ [Consultation](#)

Horizon Scanning

Question 1: Have we considered all of the external developments that may affect our operations over the lifetime of this strategy? If not, what else should we take account of?

4. We agree that it is sensible for the OLC to consider the external developments that are likely to have a bearing on it over the next three years. Many of these external developments will also have an impact on the barrister profession, and we note that the OLC has rightly included the UCL Review of Legal Regulation and further work on the quality of criminal justice advocacy in the list of external developments. We have observed that the Horizon Scanning is more focused on developments that affect certain legal service providers. For example, Horizon Scanning includes details on new SRA Standards & Regulations taking effect, the launch of the Solicitors Qualifying Examination in 2021 and the potential for law firm insolvencies to continue increasing.² Whilst we have no objection to the inclusion of these developments affecting the solicitor profession, we are concerned that the external developments affecting barristers have not been fully considered.

5. We would encourage consideration of other external developments that may specifically affect the Bar. For example, there have been significant changes regarding education and training due to the 'Future Bar Training' programme of reform by the Bar Standards Board. These changes include the ability for students to attain the three components of Bar Training through any one of the four approved training pathways.³ In December 2021 the first new Professional Ethics centralised assessment will take place with the Bar Standards Board examination being sat during pupillage or the work-based learning component rather than during the vocational component of training. There will still be an assessment set by Authorised Education and Training Organisations during the vocational component. Negotiation skills will be a mandatory part of the non-practising period of pupillage from September 2021. It is

² Ibid, page 4

³ <https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual/part-1-overview/b2-approved-pathways.html>

no longer mandatory to complete forensic accounting or practice management courses.⁴

6. There have also been a number of regulatory changes or external developments that will affect barristers. For example, the BSB Handbook is currently being reviewed and may be subject to significant change this year. Another key change is the [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#) being updated by the new [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#) on 19 January 2020. These changes were brought in by the [EU's 5th Money Laundering Directive](#) (which the UK will continue to comply with post-Brexit). Whilst we appreciate the changes will affect the legal sector as a whole, the key changes affecting barristers include an expanded definition of tax advisors, further requirements for carrying out Customer Due Diligence, and a new requirement to report discrepancies on the Companies House register. Subsequently, the Bar Council's extensive guidance⁵ provided to the barrister profession will again change this year and barristers will need to assess if and how the changes will affect their practice.

Strategy and business plan

Question 2: Have we identified the correct strategic areas to focus on in the next three years? If not, what should we be addressing?

7. We welcome the three strategic objectives that have been put forward in the OLC Corporate Strategy. In particular, we note that Strategic Objective two, 'increasing the transparency and impact of our casework to support greater access to justice' chimes with the Bar Council Manifesto, which includes "ensuring everyone has fair access to justice".⁶

8. We appreciate that the aims in the Corporate Strategy, within Strategic Objective two, include: "working more closely with the stakeholder community to communicate the lessons from OLC's work to a wider audience" and "directing a greater proportion

⁴ <https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual/part-2-for-students-pupils--transferring-lawyers/c5-assessment-of-pupils-and-compulsory-courses.html>

⁵ [Guidance](#)

⁶ [Bar Council manifesto](#)

of our budget towards feedback in order to provide a better insight from our casework and support firms where most appropriate.”⁷ This overlaps with some of the ideas that were put forward in the “Transparency and Reporting Impact discussion paper” recently published by the Legal Ombudsman.⁸ The discussion paper considered a number of new proposals, such as writing annual reviews for a set percentage of service providers (based on a specific selection criteria), publishing all Ombudsman decisions in full and publishing a greater range of data. We would be keen to learn whether this Corporate Strategy has already considered those options or will be exploring the responses generated from the Legal Ombudsman discussion paper and subsequent views from professional bodies in tandem with the responses to this paper. Whilst we appreciate the aims behind the exploration of these ideas, we are keen that duplication is avoided and coordination is achieved where possible.

9. In our response to the Legal Ombudsman discussion paper⁹ we emphasised that careful consideration of the impact of further change on the barrister profession was required, particularly due to the unique operating model that many at the Bar ascribe to, namely, being self-employed members of chambers. The same considerations are present here. We are keen to understand more about each of the activities that the OLC has planned under its ‘key things to do in the next 12 months’ section under each strategic objective. It is difficult to assess them without further detail.

10. Under Strategic Objective two, a ‘key thing to do in the next 12 months’ includes “working more closely with our stakeholder community to communicate the lessons from our work to a wider audience”. We support greater transparency for consumers and education of the general public about OLC’s work. We would like however, to know in more detail what is envisaged. For example, will it be general education about the work of the Legal Ombudsman, and how complaints are handled, or more specifically, providing feedback gained from the collection of data to stakeholders, that will in turn be available to consumers and the general public.

11. As with any further detail published regarding complaints made about barristers, there has to be a balance struck between data published that is useful for the consumer and as part of feedback for legal professionals, whilst also ensuring the protection of

⁷ [OLC Corporate Strategy 2020-23](#), page 7

⁸ <https://www.legalombudsman.org.uk/wp-content/uploads/2019/11/Updated-transparency-discussion-paper-November-2019.pdf>

⁹ *Ibid*

legal professions themselves. As we made clear in our response to the Legal Ombudsman discussion paper, any move to publish additional data about service providers and complaints raised against them must be supported by evidence-based analysis of the benefits, disadvantages and financial costs of doing so.¹⁰ Therefore, before being able to comment satisfactorily on whether it would be useful to have communications of lessons from the work, we would wish to see a sample or demonstration of what the data may look like if published, and who would have access to the data as well as its intended purpose.

12. We note that under Strategic Objective Three, the OLC has “Started scoping the potential of artificial intelligence to benefit different aspects of our business process” and in the next 12 months, it intends to “Develop any artificial intelligence mechanisms that we find effective through our scoping project”. We would welcome further elaboration on this scoping project, particularly regarding the areas in which the OLC has been scoping out the potential for artificial intelligence (AI). While we are not aware of what is being proposed, we could conceive of a utilisation of AI to increase efficiencies in some of its operational functions. However, we would strongly challenge any suggestion that AI may assist in the Ombudsman’s decision-making functions. The Ombudsman’s stated Customer Service Principles and Standards are of being Open, Fair, Independent and Effective. It is not difficult to conceive a utilisation of AI which diminishes these principles; for example, if AI were used to assist the Ombudsman in coming to decisions in cases. This scenario would be a clear breach of the Ombudsman’s principles of independence and fairness. Furthermore, the OLC is responsible for ensuring promotion of the regulatory objectives set out in the Legal Services Act 2007, including improving access to justice, and supporting the constitutional principle of law. Any use of AI which removed the Ombudsman’s ability to make decisions independently and fairly would be contrary to these objectives.

Question 3: Are there any objectives that should take priority amongst these?

13. As specified in our response to Question 1, we welcome all three of the written Strategic Objectives. We would like to ensure though, that the correct balance is struck between Strategic Objectives 1 and 2 which focus on the complaint journey and consumers, and Objective 3 which focuses on the legal sector. We want to ensure there

¹⁰ <https://www.barcouncil.org.uk/uploads/assets/0ca7c546-9677-423d-9ad862175f75a851/Bar-Council-response-to-LeO-transparency-discussion-paper-Jan-2020.pdf>

is a balance between ensuring that consumers have confidence in using legal providers and that the OLC achieves transparency on one hand, and on other, ensuring that individual practitioners are protected from unmerited complaints.

Question 4: Will our proposed actions for the next 12 months help us to achieve the strategic objectives we have set for 2020-23?

14. We broadly accept that the proposed actions for the next 12 months could help the OLC to achieve the strategic objectives to some degree. However, we have some concerns in relation to some of the proposed actions, detailed below.

15. In Strategic Objective one, there are five ‘key things to do in the next 12 months’ listed. These include, amongst other key points, developing the skills and expertise of staff, communicating all stages of the process more clearly to complainants and service providers and ensuring disputes are resolved in the most appropriate and effective way. We agree that these actions may assist to improve the experience of the service for complainants and service providers as part of Strategic Objective one. However, increasing the levels of operational staff so that people are not waiting at the front end of OLC’s service will not necessarily equate to improving the experience of users of the service if at the next stage of the process, complainants are still experiencing the same levels of delay.

16. We are also concerned at the ‘key things to do in the next 12 months’ will not have the effect that it states in three years as part of the Strategic Objectives. For example, in Strategic Objective one it is stated that “overall, this means that the legal sector recognises that we provide an excellent level of service and people are more likely to be confident in engaging with legal service providers because of our work”. We do not agree that the first part of the sentence necessarily leads into the second part, particularly as there are a number of factors as to why the public may not choose to engage with legal professionals, such as being concerned about cost, being unaware that they have a legal need and not knowing the difference between regulated and unregulated providers. The different factors affecting consumers’ confidence to engage with legal service providers cannot realistically all be addressed by the OLC alone.

17. On Strategic Objective two, OLC wants to work more closely with the stakeholder community over the next 12 months to communicate the lessons of their work to a

wider audience. We welcome this particular plan as we consider it to be important and it would build on work we have already done with the Legal Ombudsman. We were pleased to work with LeO in 2017 and again in 2019 to deliver a complaints handling seminar to the profession. We would like to continue to engage with the Legal Ombudsman and look forward to another complaints handling seminar planned for later this year.

18. We believe it would be useful for the Bar Council and barristers to be able to access up to date information about the nature of complaints brought against barristers and the complaints process, for example timings and the nature of sanctions available to the Ombudsman.

19. We note though that under 'what difference will we have made in 3 years', OLC states "law schools and others responsible for education, training and ongoing learning will have access to materials we produce about good customer service". We would welcome further information on how this would be delivered. If it were to include education, training and ongoing learning institutions, this would include a number of providers, particularly taking into account the new providers under the 'Future Bar Training Scheme'. Even were OLC's budget increased, we are keen to understand how this extensive public legal education project would be achieved and in what form.

Budget

Question 5: Do you agree with our plans for an increased budget in order to bring about the proposed improvements in customer journey and in learning and feedback to the sector?

20. We recognise the aims behind the proposed increase in budget, which includes the ambition to improve customer journey times and increase the investment in sharing learning from the casework of the Legal Ombudsman with the profession. However, we are concerned that the OLC has not fully understood the impact of requesting an increase of 20% in the budget both on representative bodies and the profession. Just over a month before the new budget year begins is not the appropriate time to request an increase in budget. We consider that all other avenues should be explored and exhausted before requesting any budget increase. It is difficult to assess the budget proposals without seeing any detailed costs provisions. As an example,

there is a proposal that this budgetary increase would help towards securing extra staff. There is, however, no evidence that any assessment has been carried out as to how many extra staff the OLC envisage are needed for the improvement of customer journey times, how much the recruitment process would cost or the length of time it would take to recruit extra staff. In our view, citing these details is crucial in any proposal for a budgetary increase.

21. We also strongly object to the timing of the proposed increase in budget. The Bar Council's budget, decided after lengthy consideration, consultation and approval from the Legal Services Board, has already been set for 2020/21. A proposal for a 20% increase for the next financial year received after the representative body budgets have been finalised and the Practising Certificate Fee application has been approved by the LSB is totally unacceptable. This is because the levy on the profession that funds the OLC is collected by the Bar Council from practising barristers and has already been factored into the Practising Certificate Fee levels. Any increase in OLC costs would cause major disruption as it cannot be easily accommodated within an already set budget. Consulting in February for an increased budget to begin in April demonstrates a lack of forward planning.

22. We are also concerned about the impact that a 20% budget increase on the OLC would have on all professions whose Practising Certificate fees fund the OLC, and in particular, the Bar. As well as the LSB levy, the Bar Council pays an OLC levy. This is collected from practising barristers. Our OLC levy for 2019 was in the region of £490k. If the OLC's plans are taken forward our contribution will increase by nearly £100k. This significant extra cost would fall to practising barristers, and as a result this additional burden on the profession would need to be justified as providing value for money, which it currently does not.

23. Funding for the Legal Ombudsman is one of several regulatory costs borne by barristers and should not be viewed in isolation. There is a risk that increases in costs that the profession bears will be passed onto consumers by practitioners raising their fees to cover the increased costs. This not only could cause consumers to be wary of using barristers, who they might perceive as too expensive but could even push consumers towards the unregulated sector, who on the face of it, may offer a cheaper service but who cannot claim to offer the same quality, protections and redress mechanisms as barristers (an indeed all regulated legal professionals). Additionally, the perception or actuality of any increased costs as a practising barrister has an

impact on recruitment and retention, particularly for those working part time or in poorly remunerated areas of law.

24. Lastly, before turning to a consultation on an increase of the OLC budget by a significant sum, we believe that all other measures should be explored and exhausted. Could training and further developing the skills of current staff serve the same purpose, for example? There could also be a review of whether current staff are working as efficiently as possible and if other processes could be further streamlined to achieve the higher level of customer service envisaged. It is also stated in this paper that the aims of the Modernising LeO Project have been achieved¹¹. As a result, we suggest that these achievements of the modernisation project should be allowed to be fully realised before making any attempts to increase the staffing budget. As case closures have increased and backlogs have already reduced significantly, we believe it may well be the case that the 20% increase in budget is not required.

Bar Council

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¹¹ <https://www.legalombudsman.org.uk/wp-content/uploads/2019/12/FINAL-STRATEGY-2020-23-Consultation.pdf>, page 3