



The Bar Council

# **Bar Council response to the Legal Ombudsman consultation on changes to Scheme Rules, case fees, and publication of ombudsman decisions**

September 2026

## **About us**

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar

- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

## Introduction

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Ombudsman consultation on changes to Scheme Rules, case fees, and publication of ombudsman decisions.<sup>1</sup>

## References

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<sup>1</sup> [Legal Ombudsman consultation on Changes to Scheme Rules, case fees, and publication of ombudsman decisions](#)

## Question 1

### Do you agree with the principles underpinning LeO's proposed changes to its Scheme Rules?

- Addressing incoming levels of demand
- Ensuring LeO can focus on complaints where it can make a difference
- Ensuring LeO's process is proportionate, effective and efficient
- Encouraging resolution of complaints at the earliest appropriate opportunity

### Please explain why you've given that answer.

We agree broadly with the first three principles that LeO has outlined. However, we question whether the proposals put forward in this consultation are the most effective way of achieving LeO's intended outcomes. The consultation is too wide ranging, encompassing a number of topic areas including, for example: an increase in case fees, changes to the wording of the Scheme Rules, introducing a prescribed eight week limit for service providers to respond to complaints, a polluter pays principle and the query on publishing ombudsman decisions. The proposals need to address the most important issue, which is how to reduce the backlog. LeO's annual report stated that the backlog continues to rise with the number of new complaints going from 10,447 in 2024/2025 to 14,259 in 2025/2026. Whilst the scale of ambition is generally admirable, we are concerned that there are simply too many proposals that will require significant time and resources to implement.

We reiterate the statement made in our last consultation response, *"Whilst we are interested in regular review of the scheme rules and the exploration of the "polluter pays"*

*principle in relation to the case fee, we are not inclined to support the proposal that LeO should undertake a full review of the Scheme as described".<sup>2</sup>*

The final principle of 'encouraging resolution of complaints at the earliest appropriate opportunity' may seem reasonable at a high level, but the methods involved in achieving this may have unforeseen negative consequences for service providers.

## **Question 2**

**Do you support the proposed substantive changes to the Scheme Rules? If not, or not fully, why – and what changes would you suggest?**

### **Rule 1.6**

We agree with the principle of LeO focussing its resources on cases where there has been demonstrable detriment to the consumer and it is important to set this out clearly so consumers understand what LeO can and cannot help them with.

However, we would like more information to better understand this proposal. We have concerns about what evidence complainants would have to show to illustrate detriment and how this is to be objectively assessed by LeO. In particular, we query how this would work in practice. For example:

- would complainants include this information in the proposed online form to LeO?
- what would constitute acceptable 'evidence' of detriment?
- how would LeO take into account those who might have difficulty in articulating their detriment, to ensure they are not prejudiced?

## **References**

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<sup>2</sup> Bar Council response to the Office for Legal Complaints Consultation on Draft Business Plan and **Budget** 2026/27

- how would LeO take into account complainants who want to describe any emotional impact rather than financial/procedural? How would complainants be expected to show this detriment?
- what sort of reasonable adjustments would be made for complainants?

## **Rule 4.5**

This is a proposal to introduce a long-stop date to investigating complaints set at 12 years.

We understand the rationale that the longer ago the event complained of, the less likely it is that evidence will be available to allow LeO to form a fair assessment of a complaint. Data protection obligations set out in the UK General Data Protection Regulation ("UK GDPR") and in the Data Protection Act 2018 ("DPA 2018")<sup>3</sup>, for example data minimisation, are likely to require legal professionals to dispose of client data long before 12 years is reached. Limitation periods – usually 6 years from the acts or neglects complained of – also influence data- and document-retention practices. This brings into question whether 12 years is too long a period.

We also support the principle of certainty for legal professionals. We are not opposed to a long stop, as long as there are exceptions in certain categories of work where detriment may only become apparent after this period, for example conveyancing (some people will remain in their family homes for decades) and some financial products.

Another consideration is the period that insurers offer to legal professionals for run off cover for negligence claims. In the case of self-employed barristers, and some barristers practising from entities, who are covered by Bar Mutual, the run off period

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## References

<sup>3</sup> [GDPR](#)

when they retire from practice is 6 years.<sup>4</sup> In case a LeO complaint prompts a professional negligence claim against the barrister, better alignment of the runoff period and LeO's longstop would be desirable. We would favour a long-stop date of 6 years from the acts or neglects complained of, subject to an exceptional discretion to investigate older complaints if the discovery of detriment occurs late, and if the matter can still fairly be investigated after a longer interval.

### **Rule 5.1**

We agree with the mandatory use of an online complaint form by complainants, assuming it to be more efficient than the current methods. This is conditional on LeO making provision, as it has said it plans to, for reasonable support to be given to those customers who cannot access LeO's online complaint form due to exceptional circumstances.

Has LeO considered whether the standardised form could be used to try and address the issue of the growing use of AI which can make complaints significantly longer and more complex?

**Rule 5.7b, 5.7r** – we raise no particular issues with these changes.

### **Rules 5.19 – 5.21**

It seems reasonable that escalation to an Ombudsman should occur in more limited circumstances than is currently the case, as long as the investigators have the knowledge and skills fairly to resolve the complaint. We think it is vital that a right to an Ombudsman decision is retained, as is being proposed. However, we are very concerned that a legal service provider will be dissuaded from applying to have a decision escalated to an Ombudsman when one of the grounds set out at proposed rule 5.21 is met, owing to the punitive cost of doing so. It would cost a legal service

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### References

<sup>4</sup> Bar [Mutual](#) – Ceasing Practice & Retirement

provider £1500 to have the Ombudsman consider the case if they are found against, as opposed to £750 if they accept the initial investigator's findings. For self-employed barristers who do not have a corporate entity to absorb the burden of this cost, the proposed cost structure will act as a disincentive to referring matters to an Ombudsman, potentially denying them the opportunity to have the complaint determined in their favour.

We query whether the Legal Ombudsman has researched how other ombudsman services deal with this situation.

#### **Rule 6 – case fees**

We will address this in our response to Question 4.

#### **Question 3**

##### **Do you support the proposed additional administrative changes to the Scheme Rules? If not, or not fully, why – and what changes would you suggest?**

We see no issues with administrative changes. The correction of drafting errors and a process of clarification is good practise.

Our only query is in relation to 'successor firms' under Rule 2.10. The new rule that consumers need to be able to raise their complaint with the provider that has taken over the old provider's work is not directly applicable to a chambers of self-employed barristers. If the complaint is against the self-employed barrister personally, and they have moved to a new chambers, the complaint may need to be dealt with by the new set, depending on the type of complaint and the timing of it.

There also needs to be a recognition that this may not always be the correct approach if the complaint relates to the clerking services.

#### **Question 4**

##### **Do you agree with the principles underpinning LeO's proposed changes to its case fee arrangements?**

- Encouraging better first tier complaint handling
- Encouraging resolution of complaints at the earliest appropriate opportunity
- Ensuring a fair distribution of costs between providers according to demand on LeO's resource

Please explain why you've given that answer.

We understand that LeO wants to encourage better first tier complaints handling. We agree with this objective as it is both in consumers' and barristers' interests to resolve complaints at the first tier, and its attainment has the potential to reduce the caseload of LeO.

However, we are concerned that introducing such radical changes to the case fees (from a current £400 flat fee to a possible £1500 maximum) would not be the most effective way to do this and may lead to negative unintended consequences for service providers. We would encourage LeO to consider smaller increases to the case fee and a period of evaluation of the impact of the policy before any more significant increases to fees are considered. A more cautious and gradual approach would reveal, and allow mitigation of, any unintended consequences.

More effective first tier complaint handling has already been a significant focus of LeO and the BSB. LeO has just published the final [Model Complaints Resolution Procedure \(MCRP\)](#), and the BSB has very recently [updated its own first tier complaints policy](#) for barristers. Perhaps LeO should first assess the impact of these developments on the backlog. Also, each time LeO changes the rules the profession has to devote time and resource to adapting to the changes, which carries a cost to their businesses.

Without further statistical data, it is difficult to conclude whether the LeO Scheme Rules or complaints rules need changing. Does LeO have any understanding of why legal service providers are not undertaking first tier handling or doing so

ineffectively? There could be a number of factors at play, such as under- resourcing or insufficient training. The proposal is providing a punitive fees structure without first providing statistical analysis of supposed insufficient complaints handling or allowing changes to embed since the updated BSB and LeO guidance. It may be that there is a more effective way of increasing effective first tier complaints handling that has not yet been identified.

As already alluded to in our response to question 2, we are particularly concerned about LeO's pursuit of 'encouraging resolution of complaints at the earliest appropriate opportunity'. The proposed incentives for service providers to resolve a complaint at the earliest opportunity are so great that there will be numerous scenarios where a service provider simply settles with a complainant in order to avoid the significant costs of a complaint escalating to LeO, even if they consider the complaint to be unmeritorious. Settlement could take the form of reimbursement or compensation, and if legal services providers have to pay more to clients to settle unmeritorious complaints, then this could result in higher legal fees overall to offset this new business cost.

We are very concerned about the case fee waiver test proposal whereby a service provider, a complaint against whom has been dismissed, will only have the case fee waived where LeO "is satisfied that the service provider took all reasonable steps to resolve the complaint at first tier". There is no guidance on what "reasonable steps" looks like and we think there is a high risk that it will be too easy to justify charging the legal professional. We think this creates an opportunity for clients to place undue pressure on their legal service provider to be compensated at the first tier stage, to avoid the complaint escalating to LeO, which could cost the lawyer more than the compensation demanded at first tier. There is a risk that lawyers will be incentivised to pay compensation to avoid the complaint escalating, even where there is no merit to the complaint.

There is also a question of whether LeO will recoup enough money through the case fees to justify the extra time that would be taken to administer this more complex scheme. If not, it could generate perverse incentives. We question whether the additional decision-making step required at LeO is a good use of resources and whether it detracts from the core business of resolving the complaints.

### **Question 5**

**Do you agree that legal providers who don't respond to complaints within prescribed eight weeks should pay an extra fee? If not, how do you think this issue should be addressed?**

We agree that eight weeks is a fair period for legal providers to have to respond to complaints. We note the Bar Standards Board first tier complaints policy confirms this.<sup>5</sup> To be able to enforce this, an additional cost for a provider who fails to issue a final response to a complaint within eight weeks does not seem unreasonable. However, there should be a provision that allows the fee to be waived in exceptional circumstances. It is easy to see that there could be circumstances where service providers for legitimate reasons are unable to respond to the complaint in eight weeks. For example, if a staff member dedicated to dealing with complaints is unwell, on leave or changes role, or if barristers are on leave or immersed in a complex trial for many weeks, there may be good reason to waive the extra fee. We therefore would like more information from LeO as to what exceptions it would allow and where and how these will be laid out, such as in the scheme rules.

### References

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<sup>5</sup> [Bar Standards Board first tier complaints, page 32](#)

### **Question 6**

**Do you agree that legal providers who make the most significant demands on LeO's resources should pay a bigger share of LeO's overall costs? Please explain why you've given that answer.**

We broadly agree with the 'polluter pays' principle. It would incentivise better complaints handling and encourages the sector receiving the highest number of complaints referred to LeO to review their practices and improve them. We would however like more information on how this would work in practice. We are concerned that well-intentioned legal professionals who have genuinely tried to resolve a complaint may end up paying punitive fees in the proposed scheme.

### **Question 7**

**Do you agree that all complaints within LeO's jurisdiction should be chargeable for case fee purposes, with a waiver applicable in certain circumstances? Please explain why you've given that answer.**

We are concerned that the introduction of a chargeable case fee to all service providers would incentivise service providers to settle complaints at first tier or at second tier through early resolution or investigation even where they dispute their merits, simply to avoid the risk of being charged a case fee or a higher case fee. Sole practitioners or small chambers who lack the financial resources to absorb case fees or who lack staff to deal with the administration burden of complaints being escalated to LeO might find it easier to simply settle with a complainant early for a value lower than a case fee, even where they do not consider the complaint to be justified. It is concerning that LeO does not seem to have taken this potential unintended consequence, that would negatively impact providers, into account.

The concept of a waiver reverses the current position where it is clear that a provider will not be liable to pay a case fee where LeO has found in the provider's favour. For example, it is not clear what would be required for an Ombudsman to be "satisfied

that the service provider took all reasonable steps to resolve the complaint at first tier”? There is a lack of detail on what criteria would be used to assess whether or not a waiver will apply. What will LeO need, in order to be “satisfied that the service provider took all reasonable steps to resolve the complaint at first tier”? What if a provider made one small and unintended mistake in their handling of the complaint – will this mean that they will be deemed not to have taken all reasonable steps to resolve the complaint and be landed with a costly case fee? In another scenario, what would happen if a provider declined to deal with a second complaint about the same issue from a serial complainer, having already dealt with the first; is there a risk LeO would determine that the provider failed to take all reasonable steps to resolve the second complaint, and require payment of a case fee? It is also unclear whether there would be an appeals process for those that disagree with LeO’s decision.

#### **Question 8**

**Do you agree that the proposed levels of case fees incentivise better first-tier complaint handling and resolving complaints at the earliest possible stage? Please explain why you’ve given that answer.**

We do not agree with this suggestion. There is a strong bias towards complainants in the proposed new Scheme Rules. They will not necessarily drive the right behaviours for handling complaints. There is a risk that service providers will instead be pushed towards resolving complaints early, regardless of their merits, to avoid the risk of case fee being charged.

We consider that the proposed case fees risk inadvertently creating a two-tier complaints handling model, whereby a well-resourced set of chambers operating in a well remunerated area of law will likely be better equipped to respond to client complaints than a less well-resourced publicly funded set. For example, the former may employ specialist staff or a third-party to handle complaints whereas the latter cannot.

Will LeO's expectations on complaints handling be aligned with the BSB's new expectations for barristers' first tier complaints handling, in particular in the area of the case fee waiver test?

We propose that if a complaint is dismissed, there should be no case fee charged to the provider. In our view, the case fee waiver test is vulnerable to subjective application to the detriment of providers because the criteria for determining whether or not a provider has taken all reasonable steps has not been set out, and it may take only one misstep, whether intended or not, for LeO to be able to say that a provider did not take all reasonable steps. There is no appeal process detailed and if one of the stated aims is offsetting the costs borne by all regulated legal professionals by raising more case fee income, there may be an incentive to try and maximise this revenue stream.

We want LeO to be efficient and effective but as currently drafted the proposed rules lean too far in favour of complainants and give the impression of an ombudsman that is making it harder and more financially risky for providers to contest service complaints made against them.

We question whether LeO has undertaken any analysis of which providers generate the quarter of all complaints that come to LeO where the provider has failed to respond to the complaints at the first tier. Are there any trends that can be identified? Is it a particular type of legal professional or business entity that is failing to deal with first tier complaints and if so, is there a less radical and more targeted and proportionate solution to the issue?

### **Question 9**

**Do you agree with the principles underpinning LeO's proposed change in policy on publishing ombudsman decisions? Please explain why you've given that answer.**

We understand the principles underpinning LeO's proposed change in policy on publishing ombudsman decisions but remain wholly unconvinced it would have any positive effect. LeO have not provided any analysis on how many consumers it expects to read ombudsman decisions and how many consumers currently look at published ombudsman decisions. As we state fully below, we have numerous concerns about publishing decisions, even assuming that all identifying details or potentially privileged information are taken out of the decisions. We think the end result would likely be so bland as to be unhelpful in any event to consumers. There is also the risk that consumers may look at published decisions on the website and decide that their situation is similar to a reported case when it is in fact different but gives them false expectations on the outcome of their case.

Stating it is 'best practice across the ombudsman sector' is not a good reason for LeO to go ahead with this proposal as different ombudsman services may publish decisions for other reasons. For example, the Financial Regulators Complaints Commissioner (the Commissioner) reviews independently complaints about the actions or inactions of the Financial Regulators<sup>6</sup> as an accountability mechanism. The Commissioner publishes on their website anonymised final reports they have issued to the Financial Regulators. LeO does not hold specific case service providers to account (and of course the decisions would be anonymised, identifying details taken out) and so it would not add value for consumers or service providers.

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<sup>6</sup> the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England (but only in respect of its oversight of clearing houses, central securities depositaries and inter-bank payment systems), and also the Payments Systems Regulator

In our view, LeO should not be committing time and resource to this. LeO itself acknowledges the high resource requirement of planning and implementing an increased level of transparency where it says in the consultation document, “there are a number of practical and legal issues that will require a significant amount of time and resource to resolve.” Indeed, we think that publishing ombudsman decisions generally, with all necessary redactions and anonymisations made, will absorb far more time and resource than may yet be apparent. “LeO has always been mindful that these resources could instead be used to resolve complaints”<sup>7</sup> and also, “a considerable amount of work remains to ensure that LeO would be in a position to safely and accurately publish its decisions”<sup>8</sup>. In the context of a stubborn backlog resulting in significant delays to the resolution of complaints, we do not consider that this work should occupy LeO’s limited time and resources.

Further, we remain unconvinced that consumers or service providers would find the publication of full case decisions sufficiently useful to justify the expense (even if the issues of privilege etc could be overcome).

There is also a risk that the reputation of a self-employed barrister could be disproportionately harmed by the full publication of a decision. For law firms, it is likely that the complaint will be dealt with at firm level, which is less harmful to individuals’ reputations.

## **Question 10**

### References

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<sup>7</sup> [Consultation: Changes to Scheme Rules, case fees, and publication of ombudsman decisions](#), p 23

<sup>8</sup> [Consultation: Changes to Scheme Rules, case fees, and publication of ombudsman decisions](#), p 24

**Do you agree that all Ombudsman final decisions should be considered for publication, ensuring the consumer can't be identified? If not, what are your concerns, and how could they be overcome?**

We do not agree that all final decisions should be considered for publication for all of the reasons outlined above.

We certainly do not believe that publishing full decisions will have any positive effect on the backlog. Rather it will divert resources from dealing with it. As stated above, there is no analysis outlining how many consumers LeO expects will actually read the published decisions. Service providers themselves already have a wealth of information, including the model complaints template, on how to deal with complaints, so published decisions will not help them (even assuming they have time to read them).

*As set out in our last consultation response – “However, related work, such as publishing case decisions (with necessary redactions) is very resource intensive. We remain unconvinced that the significant resources and costs required to realise this aim are justified, particularly when it risks diverting resources away from the core business of handling complaints. We remain wholly unconvinced that publishing ombudsman decisions has had or will have any effect at all on reducing the number of complaints referred to LeO.*

*The proposal that LeO will redesign how it writes and formats decisions, using AI tools where possible, will require significant additional officer/investigator level resources, at considerable cost. Its aim to use generative AI to assist with this task is questionable, at best. LeO acknowledges that ombudsman decision are very detailed and complex in nature, and it is not clear that using generative AI tools would achieve efficiencies. An appropriately trained human would always have to review the AI-generated material for accuracy. Further, as we have previously observed, ombudsman decisions, if they are to be published, require careful consideration and redaction, to avoid the release of sensitive and privileged information.*

*We would also like to understand the extent to which those decisions and other information LeO has already published are read. If the “Public Interest” decisions are not engaging a wide audience, publishing more ombudsman decisions – still less all of them – is most unlikely to be an effective use of resources. The increase in the complexity of case investigations creates additional challenges to ensuring that the decisions, and any lessons to be derived from them, are understood.”<sup>9</sup>*

We do not think that those concerns, set out in our last consultation response, have been sufficiently addressed, still less satisfactorily answered.

## Contact

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## References

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<sup>9</sup> [Bar Council response to the Office for Legal Complaints Consultation on Draft Business Plan and Budget 2026/27](#), paragraphs 20 - 22