



## **Bar Council response to the Legal Ombudsman Strategy and Business Plan 2018-2019 consultation paper**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Ombudsman consultation paper entitled Strategy and Business Plan.<sup>1</sup>
2. The Bar Council represents over 16,000 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: Do you agree with our strategic overview and analysis?**

4. We believe LeO is right to focus on striking a balance between timeliness and quality of its determinations. As the MoJ Tailored Review noted, LeO's prior tendency was to prioritise speed at the expense of thorough investigation and quality decision-making. There can be an inevitable tension between timeliness and quality and in the event of a conflict between the two, we believe that the quality of a determination should take precedence. Inaccurate or unjustified adverse findings can have a serious and deleterious impact upon legal service providers' reputations. The quality of a

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<sup>1</sup> Legal Ombudsman (2018) Strategy and Business Plan 2018-2019

determination is vital to both fairness and effectiveness - both of which are key LeO values.

5. The strategic issues which LeO identifies appear to be logical. However, we are unable to understand how the sector's improving its first-tier complaints handling would result in LeO cases taking longer to resolve. We would welcome further clarity on this point.

**Question 2: Do our vision, mission and objectives remain appropriate?**

6. We agree with the objectives and principles LeO sets out. We also agree that LeO plays a key role in protecting consumers and improving the service standards of the profession. As an Ombudsman service, LeO is an inquisitorial body, and we think that this approach should find expression in LeO's mission or principles—that it will investigate thoroughly and proactively as an inquisitorial rather than adversarial fact-finder.

**Annual priorities**

**Question 3: Have we identified the right annual priorities for 2018-19? Are there others we should consider?**

7. We agree with the priority of redefining KPIs to better balance timeliness and quality. We also recognise that LeO, like any other employer, needs to be competitive and make conditions attractive to recruit and retain the staff who are ultimately responsible for carrying out LeO's work.

**LeO's business plan**

**Question 4: Does the business plan include the right actions to achieve our vision and strategic objectives?**

8. The higher than expected demand can make finding efficiencies difficult without compromising quality. We have already emphasised the importance of this earlier in our response. We welcome that LeO proposes to find substantial savings by reducing its estates footprint.

9. Objective 1 – under 'Improve our quality', we would first emphasise that enhancements to the service improvement framework should take into account feedback from members of the profession who have been investigated by LeO, and

interested members of the profession more generally. We would also be happy to engage with the LeO on this. Second, we are concerned that the exhortation to “consider and maximise use of scheme rules to achieve timely resolutions” detracts from the point the MoJ and OLC have raised about balancing timeliness and quality.

10. Objective 2 – we fully support many of the deliverables listed under “Improve the volume and value of feedback to service providers, the public and stakeholders.” LeO plays a valuable role in translating lessons from cases into best practices that improve service standards across the profession. We have already done some work with the LeO in 2017 to provide support to the profession on its first tier complaints handling processes. We would like to continue to engage with LeO in this way going forward.

11. Objective 3 – The unregulated sector is not within the scope of LeO’s remit and we question the legitimacy of its using resources (largely provided by the regulated legal profession) to undertake research work on this topic. We are not convinced of the value or necessity of a single digital register of regulatory data. The reason there are multiple regulators is because the segments of the profession are so different and we question what purpose this register would serve. By contrast, we agree with LeO’s decision not to focus on gaining ADR provider approval at this time when its resources are stretched and it is trying to retain staff to work on its core functions.

12. Objective 4 – we would encourage LeO to ensure that any flexible working policies it adopts, in order to meet legitimate recruitment and retention needs, are compatible with case ownership and investigatory continuity that will ensure the best investigation and decision-making.

### **LeO’s budget**

**Question 5: Do you have any specific comments on our proposed budget for 2018-19? Are the assumptions and risks taken into account in setting our proposed budget appropriate?**

13. We welcome LeO’s drive to find efficiencies and keep its costs low. The LeO is prudent in anticipating (and attempting to prepare for) higher-than-predicted demand for 2018/19 given that this occurred last year.

### **Measuring LeO’s performance**

**Question 6: Do you have any comments on the proposed Balanced Scorecard which will measure our performance?**

14. We support the use of a timeliness measure that takes into account the nature of cases, so that speed is always responsive to thoroughness.

15. LeO has hitherto measured quality by a customer satisfaction survey, and for 2015/16 and 2016/17 this averaged 60%. This was not bad by any means (although we note that it has more recently fallen to 52%); however, the figure was a composite of both complainants and service providers. It is important to differentiate between them, as in many cases they will have completely contrasting views. Although the OLC has stopped reporting on reputational feedback, there was a downward trend of confidence on the part of service providers in LeO (49% in 2015/16 compared to a complainant figure for the same year of 79%<sup>2</sup>)—the fact that providers have had markedly lower confidence in LeO than complainants is material. It is not simply a case of lawyers being disappointed to lose, as LeO only upholds a minority of complaints. It suggests that LeO needs to reassess its performance by reference to doing justice to providers.

16. Therefore, we support the move to separate customer satisfaction measures for complainants and service providers. We understand the separate measures for those satisfied by the outcome and those dissatisfied (i.e. a complainant or lawyer may have a decision against them but find the process and experience fair); however we are not clear what the 80% and 20% measures refer to. That point aside, we can understand that the use of this measure might make the reputation feedback unnecessary.

**Bar Council**

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<sup>2</sup> P43 Ministry of Justice (2017) 'Tailored Reviews of the Legal Services Board and Office for Legal Complaints'