

A consultation on the Legal Ombudsman's Strategy and Business Plan 2017-2020

**A response by
The Chartered Institute of Legal Executives (CILEx)**

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1. Summary of recommendations

- 1.1. The public and consumer interest should have explicit presence in the Ombudsman's vision, mission, objectives and values.
- 1.2. We would encourage the Ombudsman to consider prioritising the deliverables in the work plan to ensure the most critical elements are delivered.
- 1.3. Considering all of the various drivers that are impacting the sector, the Ombudsman should consider only taking forward those strands of work that are absolutely necessary at this time.
- 1.4. The Ombudsman should be mindful of the need to be, and be seen to be, independent from Government and other agencies – especially in the context of its position on the potential for Government to extend the Ombudsman's jurisdiction, and in its financial relationships with the Ministry of Justice.

2. Introduction

- 2.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 2.2. CILEx continually engages in the process of policy, regulatory reform, and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform these developments.
- 2.3. As it contributes to reforms in policy, regulation and law, CILEx endeavours to ensure regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.

3. General points

- 3.1. CILEx broadly supports the Ombudsman's strategy, and welcomes the opportunity to contribute to its development.
- 3.2. We consider there may be benefits to prioritising the deliverables in the work plan to ensure the most critical elements are delivered.
 - 3.2.1. Quantifying the impact of the proposed work plan, both in terms of individual projects and as a collective work stream, would enable a more balanced assessment of what projects should and should not be taken forward at the current time. We would suggest there is a need for an appropriate assessment of impact of these developments, grounded in evidence and referenced.
- 3.3. We also welcome the statement made by the Chief Ombudsman at the stakeholder engagement event on 28 February 2017 that the levy funded by authorised persons under the Legal Services Act 2007 will not be used to fund extending the Ombudsman's jurisdiction to consumers of unauthorised providers.

- 3.3.1. We would ask that there is greater clarification on use of the term 'jurisdiction' in the final strategy, as the term is used throughout the consultation, at times in contradictory statements.¹
- 3.4. We would also welcome much greater transparency on the OLC's financial relationship with the Ministry of Justice, particular in regard to the capital expenditure budget.

4. Do you agree with the analysis of the strategic drivers?

- 4.1. The strategic drivers identified in the consultation are broadly those we would identify.
- 4.2. There are some contextual considerations however that we feel the final plan could benefit from. Some of these do not require explicit referencing in the plan, but the Ombudsman should be aware of their impact.

Regulatory developments

- 4.3. Whilst the LSB's vision and strategy will be key element of the Ombudsman's regulatory strategic drivers, it should be considered in the context of the visions and proposals from other stakeholders, most notably the Government's.
 - 4.3.1. This strategic driver might therefore fall under the Tailored Review outcome, for example.
- 4.4. We would encourage the Ombudsman, when assessing regulatory developments, to not focus too narrowly on any one frontline regulator. Developments are underway at CILEx and CILEx Regulation that LeO should be aware of and factor into their considerations, including;
 - 4.4.1. CILEx Council has recently agreed a revised governance structure that ensures the independence of frontline regulation, and
 - 4.4.2. The application later in 2017 from CILEx Regulation to become a licensing authority for ABSs.

Technological changes

- 4.5. We would suggest that there should be recognition for the opportunity to utilise digital comparison tools (DCTs) for promoting LeO as a resolution tool, which goes beyond the strategic driver of only being an intermediary market that benefits from increased data sharing.
- 4.6. Additionally the implementation of Lord Justice Briggs' proposals for an Online Court (OC), and the parallel modernisation programme underway by HMCTS, should be considered for its impact on litigation and advocacy providers.

Jurisdiction

¹ For example on page 25 "...be discerning about any expansion of our jurisdiction, avoiding an explicitly expansionist strategy" is quick followed by "We welcome any opportunity to extend our jurisdiction..."

- 4.7. We agree that the Ombudsman’s approach should be to focus on delivery of the current scheme, and be generally discerning about extending its jurisdiction.

Legal services context

- 4.8. Consideration should be given for a variety of other drivers that are impacting on providers, including;
- 4.8.1. Proposals to reform the personal injury market, including raising the small claims limit for PI claims, which would make it uneconomical for providers to support claimants, and would reduce access to justice.
 - 4.8.2. The review announced by the Ministry of Justice of the Legal Aid, Sentencing and Punishment of Offenders Act. This outcome of this review will be particularly relevant to vulnerable consumers.
 - 4.8.3. The myriad of seismic changes that will be caused by Brexit, and the ways in which it will affect different legal services markets for both individual consumers and organisations of all sizes.
 - 4.8.4. The proposals to extend the Fixed Recoverable Costs regime, which risk introducing a one size fits all approach that will be inappropriate for particularly complex cases.
 - 4.8.5. The impact of the Prisons and Courts Bill.
- 4.9. Upon considering all of the various drivers that are impacting the sector, including those referenced in the consultation, it is clear that the sector is undergoing significant and simultaneous waves of reform. Work programmes that the Ombudsman undertakes which change or make place additional requirements on providers will add to this. We therefore ask that the Ombudsman carefully considers only taking forward those strands of work that are absolutely necessary at this time.

5. Are the vision, mission and strategic objectives the right ones?

- 5.1. We would like to see the public interest explicitly reflected in the organisation’s vision.
- 5.1.1. Arguably LeO’s contribution toward enhancing the ‘UK’s global reputation as a legal centre of excellence’² is a subsequent benefit from pursuing the Ombudsman’s primary vision of a legal jurisdiction in which legal complaints are minimised and resolved in a timely, fair and impartial manner.
- 5.2. Whilst the public interest should have a primary place in the organisation’s vision, consideration should also be given to explicitly including ‘consumers’ in the vision and/or mission.

² Page 7

6. Are our planned activities the right ones to deliver our four proposed objectives? Have we missed any, or are there any we should de-prioritise?

- 6.1. We consider there may be benefits to prioritising the deliverables in the work plan to ensure the most critical elements are delivered.
- 6.2. The objective under Objective 2 to ‘improve the volume and value of feedback to service providers, the public and stakeholders’³ could possibly benefit from rephrasing to reflect that high quality feedback is more valuable than a high volume of feedback.
- 6.3. The deliverable, also under Objective 2, to ‘influence education and training through development and delivery of a new suite of professional learning courses...’⁴ does not appear to have been grounded in a specific need.
 - 6.3.1. No evidence has been provided, in the business plan at least, of a deficit in understanding of the role of the Legal Ombudsman, and the most recently published stakeholder survey (2014) showed a growing awareness and understanding of LeO’s role.
 - 6.3.2. We are anecdotally aware however of generally positive feedback from the education and training support offered by the Ombudsman to providers.
 - 6.3.3. We would welcome clarification on what specific education and training need there is that the Ombudsman believes needs addressing.
- 6.4. If the Ombudsman intends to pursue accredited CPD it should consider more modern CPD systems such as CILEx Regulation’s that are outcomes-focused, rather than hours or points-based systems.
- 6.5. CILEx supports the principle of improving access to resolution and redress schemes, including for those securing services from unregulated providers. In such reforms, the Legal Ombudsman must ensure that its approach is in keeping with the impartiality and independence rooted in its vision, mission and values.
 - 6.5.1. We believe this independence has not been fully considered in the deliverable under Objective 3 to ‘work with the Ministry of Justice on the opportunities and benefits of offering redress to consumers using unauthorised providers.’ As worded, the business plan offers near-unconditional support for potential government activity, and makes no reference to the challenges and disadvantages that the Ombudsman may be in the best place to advise on.
 - 6.5.2. The Ombudsman should maintain an impartial and independent stance, from government as well as from regulators and approved regulators. There will be some circumstances where the Government proposes to improve access to resolution services that may not be in the public interest, or may harm existing services or providers. In such circumstances the Ombudsman has a duty to make a balanced

³ Page 13

⁴ Ibid.

assessment, informed by appropriate and expert stakeholders, and speak in the public interest.

- 6.5.3. Given that the reforms are largely conceptual at this moment in time, and important issues such as how they will be financed have not been fully explored, we believe this deliverable is premature and risks undermining the appearance of independence from government.

7. Does the strategy strike the right balance between realism and ambition in maximising the impact of our scheme, modernising the organisation and the changing legal services landscape?

- 7.1. Given the high level of flux the legal sector is in, especially considering Brexit and proposed reforms in other areas as referred to in 4.3 – 4.8 above, we would argue that the Ombudsman should consider the impact of the activity proposed in the business plan will have on providers.
- 7.2. Where significant impact or cost is expected to fall upon the legal sector we would recommend only taking forward those areas of work that are necessary at this time, and otherwise supporting a period of consolidation.

8. Do you have any specific comments on our budget for 2017-18 (pages 17-19) and our business plan (pages 11-22)?

- 8.1. We welcome the continuing approach of separate funding and accounting streams for respective activities and jurisdictions. This is important to ensure that no particular fields, sectors or communities are subsidising the regulatory costs of others outside of acceptable shared indirect costs.
- 8.2. We request that the Office for Legal Complaints has greater transparency in the financial information it publishes for public consultations, particularly with regard to the expenditure and accounting of its capital budget.
- 8.2.1. According to the OLC Framework Document the grant and recovery of money for capital expenditure is treated as a loan by the MoJ.⁵ Whilst the repayment of this loan may be done in the same instalments and intervals as one would account for ordinary depreciation, we would encourage the OLC to use more clear and transparent language to describe this financial relationship.
- 8.2.2. Of especial importance is the transparency of any conditions attached to this loan, as any such conditions should not threaten the independence of the OLC or LeO.
- 8.3. Therefore we would welcome the following clarifications;

⁵ “Capital expenditure will be accrued for by the MoJ and depreciation received by the OLC will be paid over to the MoJ and set against this accrual and this OLC capital expenditure treated as a loan from the MoJ allocation.” Paragraph 4.7 ‘Agreement between Ministry of Justice and Office for Legal Complaints – Framework Document’

[http://www.legalombudsman.org.uk/downloads/documents/official_docs/OLC%20Framework%20Document%20-%20FINAL%20-%20September11%20\(signed\).pdf](http://www.legalombudsman.org.uk/downloads/documents/official_docs/OLC%20Framework%20Document%20-%20FINAL%20-%20September11%20(signed).pdf)

- 8.3.1. Was the loan subject to a formal agreement, and if so will this be published?
- 8.3.2. Were any conditions placed on that loan, and if so will they be included in the publication?
- 8.3.3. Is the loan subject to interest charges?
 - 8.3.3.1. No mention is made of interest charges in either the consultation document of the OLC Framework Document. If there are charges these should be transparent and accounted for in the budget.
 - 8.3.3.2. If the loan is interest free, then is the OLC of a view that this could constitute a benefit that is received from the Ministry of Justice?
- 8.3.4. What are the respective timescales for this loan repayment?
 - 8.3.4.1. Will these begin to be depreciated/repaid at the end of the indicative budget period under consultation (i.e. 2020-21 after a total capital expenditure of £1,671,000 has been made), or will depreciation/repayment commence after the initial 2016-17 outlay whilst further capital expenditure takes place as per the budget?
 - 8.3.4.2. If the latter, then what contingencies are planned for a potential confluence of repayments that may occur from the accumulation of loans over four years?
- 8.3.5. What impact, if any, does the OLC expect loan repayments to have on other expenditure and services?

Please contact the individual below with any queries of for further contributions.

For further details

Should you require any further information, please contact;

Richard Doughty
Public Affairs Officer
richard.doughty@cilex.org.uk
01234 845710