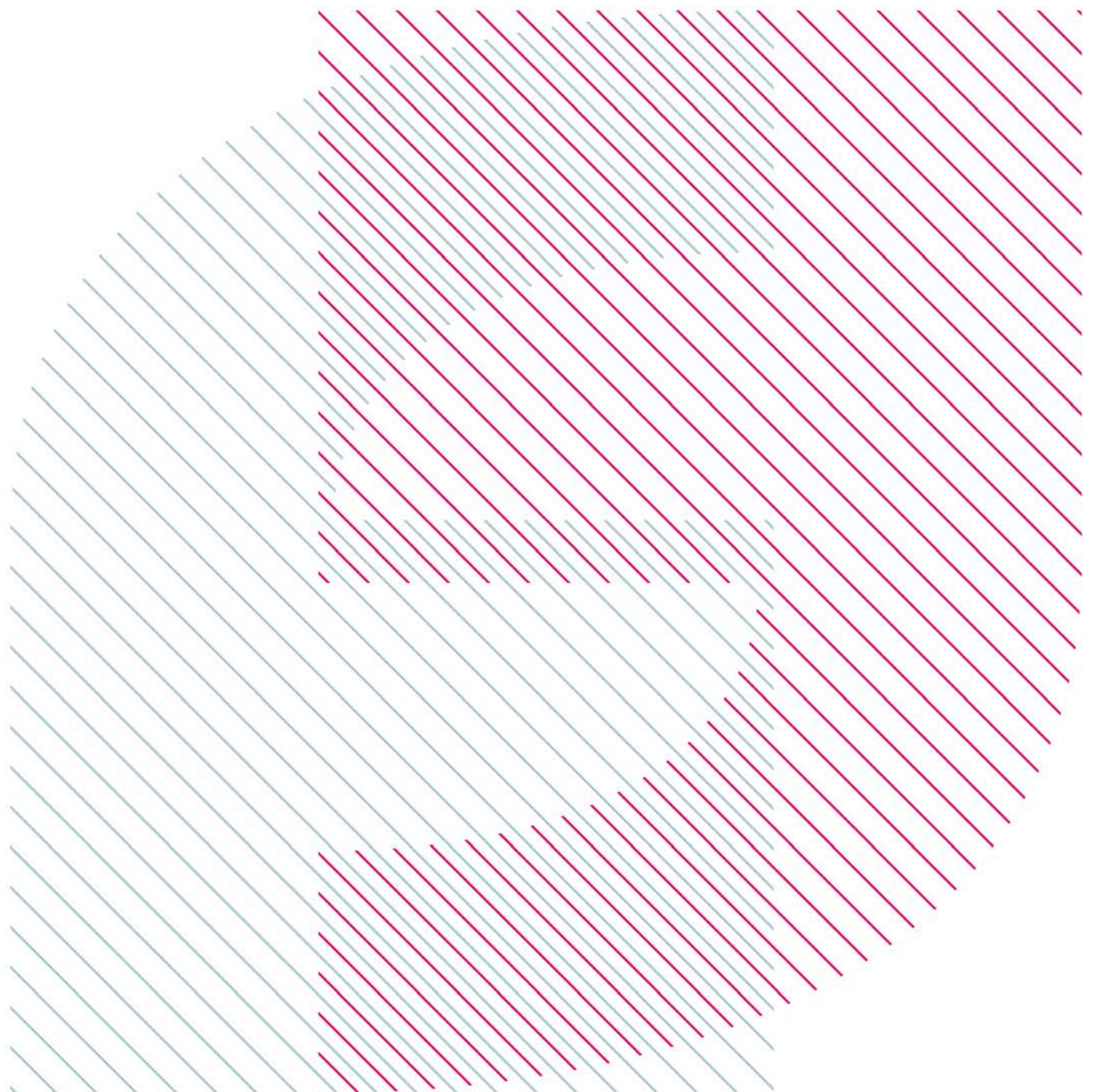




**Legal Services Board:
Draft strategy and
business plan 2021/22**
Response



Introduction

1. The opportunity to respond to the Legal Services Board consultation on a strategy for legal services regulation, and the draft Business Plan for 2021/22 is timely, affording the OLC a chance to draw down on the responses received in its consultation on the Legal Ombudsman Scheme.
2. Three themes feel particularly pertinent to the LSB consultation. The first is around the importance of a common cause and the need for alignment of strategies across the sector. For the OLC this also speaks to recognising that the Legal Ombudsman's recovery is not just the OLC's problem and nor is it just about the regulatory objective of protecting and promoting consumer interests through access to redress. This is fundamental to how the legal profession engages their customers, the sector's commitment through education and learning to improving their customer experience and the contribution that LeO should be making to this. The current backlog is affecting confidence in the scheme, credibility within the sector, the trust of complainants, and the OLC's ability to have conversations about LeO's accountability and fit within the wider regulatory framework.
3. The OLC is therefore supportive of the creation of a strategy for the legal sector and a Business Plan for the LSB which sets out how this will be implemented. A sector wide strategy allows not only the LSB, but all stakeholders, to take a much more long-term and joined up approach to the challenges faced by the sector. As outlined below the OLC looks forward to joint working with the LSB on the areas where the Ombudsman can contribute to the identified sector-wide challenges.
4. The second theme is around echoing the LSB's acknowledgement that flexibility is needed and that agility needs to be built in to Plans. This is welcome. The lifetime of the OLC consultation period has shown that the disruptive influence of Covid is ongoing and will need to be addressed on a multi-year basis; that uncertainty now needs to be planned for; and changes must be sustainable. This is clearly a balancing act. The OLC knows that the sector needs to see and understand a level of detail about performance forecasting and the impact of planned improvements that satisfies it but, like the LSB, the OLC cannot and will not claim a level of certainty which is not realistic at present.
5. The third theme is around the importance of communication, the sharing of information and establishing better lines of accountability. The OLC will make a new commitment to not just provide the sector with more information in real time, but to establish better and more regular forums of accountability. This lies at the heart of the new agreement and working relationship that will be established

between the Legal Ombudsman and the sector and accords with the LSB's commitment to working together in pursuit of a common agenda.

6. The OLC is committed to working with the LSB and stakeholders in the sector, to ensure understanding of the Legal Ombudsman's progress and using the practical experience and insights from complaints handling to inform developments in the sector.

Response to specific questions

Q.1 and 2. Do you have any comments on the three strategic items that we have identified? Do you have any comments on the nine challenges that we have identified for the sector? Are there any important sector challenges that we have not addressed?

7. Both the strategic items and nine challenges appear to be appropriate and comprehensive.
8. As is noted in the business plan it will be important to maintain a flexible approach to addressing these challenges, and understanding how the Covid-19 pandemic is affecting and shaping these.

Q.3 How can you/your organisation contribute to overcoming the sector-wide challenges we have identified?

Strategic theme: Stronger Confidence

9. The Legal Ombudsman is a vital part of consumer confidence for the legal sector and so it is best placed to support the sector in relation to the strategic theme of 'Stronger Confidence'.
10. As the State of the Legal Services Report highlights, an ombudsman plays a central role, providing assurance for consumers who are concerned about the service they have received from their provider, as well as setting standards for reasonable service across the sector, not only through decision-making but through a wider programme of learning and insight.
11. This is consistent with the OLC's vision that the work of Legal Ombudsman contributes to building confidence in legal services in England Wales. This means that customers who need to use the service feel that they have had a fair experience, regardless of the outcome; the learning and insight programme

works alongside the sector to promote customer service; and that the knowledge from complaints handling is used to ensure that redress and consumer protections are actively considered in policy making and developments in the sector.

12. Stakeholders are aware that there are currently significant delays before an investigation begins. Reducing the delays is obviously a clear priority for the Legal Ombudsman and the new Business Plan will set out how this can be achieved over the next two years.
13. Alongside the focus on improving customer experience, parallel improvements must take place in order to support stronger confidence in the sector. These include innovation in service delivery (ensuring an efficient and value for money business process) and learning and insight (promoting customer service and using experience of complaints handling to support future sector developments).
14. The OLC's Business Plan for the scheme will set out how the Legal Ombudsman will achieve this. Innovation work to automate manual parts of the business process is already underway and the first project which will automate the creation of case files from complaint forms is now in place and being tested. The Legal Ombudsman is continuing to scope and plan for the next projects.
15. The Legal Ombudsman is also focused on identifying ways in which the business process can be changed in order to increase the pace of case closures. This is particularly important for low complexity cases which currently account for approximately 60% of investigations. It is important that consumers and service providers have confidence that an appropriate process is being used for their complaint.
16. Last year the CMA report recommended that more work be undertaken on the unauthorised sector. The OLC response highlighted the importance of understanding the nature of the complaints in order to develop an appropriate redress model. The planned innovation work could deliver valuable added insights into an alternative business model for these complaints whilst not distracting from the core and funded focus on the regulated sector. This will directly support the LSB and MoJ's work.
17. In addition to a focus on innovation and service delivery, delivering a learning programme that shares insights from complaint handling with consumers and service providers is an essential part of contributing to confidence in the sector. The Legal Ombudsman already runs a range of courses for service providers. So far this year over 350 service providers have benefitted from attending these. The plans for next year focus on refining this provision in order to deliver tailored support for those who want and need it, and working with regulators to achieve this. This is work which can lead to improvements in the service that providers

deliver and tackle those whose complaints performance is consistently undermining consumer confidence.

Strategic theme: Better Services

18. In addition, in relation to the strategic theme of 'Better Services', the Legal Ombudsman will, subject to final Business Plan approval, begin the Transparency and Reporting Impact project in 2021/22 with a view to focusing on the business case for publishing full ombudsman decision data. The Legal Ombudsman is looking forward to working with the LSB and the regulators to determine a robust set of quality indicators for the sector which will support consumer choice.

Q.4. *Do you have any comments on the suggested areas of priority for the sector 2021-24?*

No further comments to make.

Q.5 and 6. *Do you agree with our proposal to pursue these workstream? Do you see any areas of joint working between the LSB and your organisation?*

19. We agree with the proposed workstreams and that they fit within the broad strategic themes.

20. There are a number of areas where the Legal Ombudsman will be able to work with the LSB:

Consumer engagement. As noted above the Transparency and Reporting Impact project is due to commence next year. The outputs from this work will inform discussions on quality indicators. In addition it will be important to understand how the data from different bodies can be brought together to build a picture of the quality of service providers which supports consumer choice, for example how regulator data can contextualise complaints data.

Scope of regulation. The Legal Ombudsman is happy to share data which relates to enquiries about unauthorised providers, although the data is likely to be minimal. Taking full account of the funding model and prioritising its recovery programme, the Legal Ombudsman will use its experience of providing redress to work with the LSB and Ministry of Justice, to consider appropriate redress mechanisms for the unauthorised sector.

Vulnerable citizens. The Legal Ombudsman has Vulnerable Customer Champions who support customers needing additional help to access the complaints process. The support includes helping consumers to make a first tier complaint, intervening between the consumer and service provider so the service provider understands the

consumers needs, as well as helping them to engage in the Legal Ombudsman investigation process. The case studies and experience of staff engaged in this work may provide useful information for this work. Staff also receive special training to allow them to support these consumers and it would be interesting to consider whether there is wider training in this area that can support service providers.

Legal Expenses Insurance. In the LSB business plan this is mentioned as a possible mechanism for addressing unmet legal need. Alongside this the Legal Ombudsman would be happy to share specific examples of the gaps which occur in redress when cases fall between Legal Expenses Insurance and Compensation Funds, and the impact that this has on consumers and their experience of the legal sector. This is something the OLC and Ombudsman have highlighted a number of times over the last year and would be interested in taking forward.

21. In addition to the above areas the OLC will undertake a review of the Legal Ombudsman's scheme rules towards the end of 2021/22. If changes to the rules are required this will require engagement with the LSB and consultation with the sector.

22. There are two other areas of work the OLC will be drawing to the LSB's attention:

Reviewing requirements for first tier complaints handling. The Legal Ombudsman has seen some cases recently which highlight that the first tier complaints handling requirements do not fully cover areas such as beneficiaries' complaints. The requirements state that there is a duty to provide first tier complaints handling to clients, but this does not necessarily cover beneficiaries. While this is rarely an issue there have been cases where providers have queried their obligations to beneficiaries, and there is a gap as beneficiaries have the right to bring complaints to the Legal Ombudsman.

Reviewing the levy. The levy and calculation of the Legal Ombudsman component has been raised during the course of the OLC Business Plan discussions. Stakeholders have asked whether there are other methods that could be used, for example looking at case complexity and the OLC will give consideration to this, working with the LSB as required.

Q7. Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021/22?

23. Following on from the work of Professor Mayson and the CMA that there is a recognition of the need for regulatory change in the legal sector, and that regulation founded on a historical list of reserved activities is flawed. However it is also acknowledged that this is unlikely to happen in the short to medium term, and therefore a phased approach to change is required.

24. Building on the existing list of reserved activities should only be considered if it is part of this phased approach, or if long-term regulatory reform is ruled out. Whilst reforming the list of reserved activities may resolve some of the challenges, the fact that the current system of regulation is confusing to those outside of the sector should be kept at the forefront of any planned changes.
25. Under the current Business Plan the LSB will be looking at the basis for bringing the unauthorised sector under a regulatory arrangement. The SRA is considering activity based regulation. These areas of work both appear to be useful starting points which could inform either an approach to reserved activities or wider reform of regulation if needed.
26. Given that there seems to be an agreement that “risk” should form the basis of a future regulatory structure, it is important that these areas of work seek to clearly define what is meant by risk.

Conclusion

27. The OLC welcomes the opportunity to contribute to the LSB consultation process. Whilst the legal sector is facing a wide number of challenges at the moment which are being exacerbated by the impact of Covid-19 it remains vitally important to look at and identify the opportunities for change, improvement and development. Collective working around pursuit of a common agenda has never been so important. Recent months have shown that the legal sector is able to adapt to changing circumstances when needed. It is important that the sector together builds on this momentum, which will support not only the profession but also the consumers who face legal problems and need the support to navigate the system.
28. The OLC looks forward to working with the LSB to support this work.

For any questions about this response please contact Alex Moore, External Affairs Team at support@legalombudsman.org.uk