

# BAR STANDARDS BOARD

## BSB Response to Legal Ombudsman Strategy and Business Plan consultation

Dear Ms Edwards

The Bar Standards Board (BSB) welcomes the opportunity to comment on the Legal Ombudsman's Strategy for 2011-2015 and its Business Plan for 2012-2013. The BSB also congratulates the Legal Ombudsman on the successful launch of the new service and an effective first year of operation.

Our responses to the consultation questions are as follows:

***Consultation question 1- We have suggested what we think are the broader contextual issues that need to be considered in developing our Strategy and Business Plan. Are these the right ones? Would you add any of your own? Please give reasons.***

The BSB is satisfied that the broader contextual issues are the appropriate ones for the Legal Ombudsman to take into account in developing its strategy. We recognise that the legal services market is changing at a rapid pace and we acknowledge that the current remit of the Legal Ombudsman does not necessarily take into account the full complexity of the market which may leave some areas of legal service provision outside the scope of both regulation and the Ombudsman's service. The BSB therefore acknowledges that it may be beneficial for the scope of the Legal Ombudsman's service to be extended, either by statute or on a voluntary basis, to address the current gaps.

However, the BSB would wish to sound a note of caution in relation to aligning the Legal Ombudsman too closely with other Ombudsman schemes working in what is categorised in the paper as "similar areas". Such an alignment must be based on identifying truly "similar areas" and difficulties inevitably arise in identifying these areas given that the legal services market spans both the private and public sectors which, in terms of Ombudsman's schemes, take slightly different approaches. It is important that the Legal Ombudsman scheme genuinely reflects its wide remit and does not operate solely according to models that are appropriate for private sector/financial Ombudsman schemes.

**An additional factor the BSB considers needs to be taken into account in terms of the broader contextual issues is barristers' primary duty to the court, as opposed to their clients. This duty is often misunderstood by clients and is not one that necessarily applies in "similar areas".**

The BSB fully acknowledges the changes in the provision of financial services that have created significant overlap with legal services and accepts that the strategy adopted by the Legal Ombudsman must take these issues into account as major factors in shaping its service. Nevertheless, the BSB's previous experience is that the demography in relation to the source of service complaints about barristers shows that most complaints emanate from clients in the quasi-public legal fields such as crime, family, housing and immigration. We acknowledge that the Legal Ombudsman is fully aware of this but would emphasise that the differing needs of such, potentially vulnerable, clients must remain a central factor in the Legal Ombudsman's strategy in order to ensure that they are not lost in the midst of the need to shape the service to address the more dominant issues arising from the financial, commercial and international legal services markets.

***Consultation question 2 - We have set out our assumptions in planning for the coming three years. Are these the right ones? How would you refine, alter or add to our assumptions to assist with our planning?***

***Consultation question 3 - Do you have any comments on (a) the approach to forecasting we have taken and (b) the ranges of volumes we have anticipated?***

The BSB acknowledges the successful steps that have been taken by the Legal Ombudsman to keep its costs within the estimated set up and first year budget as well as the attention that has been paid to balancing the needs of developing an efficient service with the financial burden on the professions: we commend the Legal Ombudsman for achieving the financial results to date.

The BSB is not surprised at the statistics in relation to the proportion of informal and formal resolutions and therefore we consider the assumptions made for the next three years are both right and realistic. However, given the relatively very low number of complaints about barristers that feature in the Legal Ombudsman's work, we do not consider we can provide any level of informed comment regarding the overall forecasting set out in the consultation paper or on the predicted volumes of complaints. In reality, even a significant change in the number of the complaints received about barristers, which is unlikely, would have a relatively insignificant impact on the general forecasting set out in the paper.

***Consultation question 4 - We have set out five key performance indicators (KPIs) and strategic objectives. Do you agree with them? Please give your reasons.***

***Consultation question 5 - Is there anything you would add that would help us sharpen up our approach to introducing and measuring KPIs and delivering our strategic objectives?***

The BSB agrees that the KPIs and strategic objectives are appropriate but would add that a central objective/aspect of risk management should be to ensure that the Legal Ombudsman caters sufficiently for the needs of the most vulnerable clients receiving legal services and also ensures equality of access and treatment.

**Timeliness:** The BSB agrees with setting KPIs in relation to timeliness based on resolution within defined time periods but considers these periods should be matched with the level of progress that is expected within the timeframes i.e. the timeframes should be matched to informal resolution and/or investigation as well as the issuing of formal Ombudsman's decisions.

**Quality:** The BSB also supports KPIs in relation to quality but notes the lack of specificity regarding how quality will be assessed. We look forward to the development of the numerical performance indicators for quality and tracking performance referred to in the paper at which point we may wish to comment further.

**Costs:** The BSB agrees with the proposals to track and report on costs as outlined in the paper.

**Reputation:** The BSB agrees that Customer Satisfaction Surveys should be an integral tool in monitoring performance and welcomes the approach outlined. It hopes that the results will be published.

**Impact:** The BSB supports the wider work the Legal Ombudsman intends to take in relation to other regulators but would also emphasise the need to support the approved regulators in ensuring that standards are maintained by providing feedback on the Legal Ombudsman's experience of first tier complaints handling. To date, such feedback has not been available but is a vital tool to allow the approved regulators to assess whether regulatory action needs to be taken in this area. Given that approved regulators no longer play an active role in the outcome of first tier complaints, it is essential that this impact is monitored and reported on by the Legal Ombudsman and relevant feedback provided to ensure approved regulators can meet the regulatory objectives in order to establish whether complaints handling standards are being maintained.

***Consultation question 6 – We have outlined a series of activities and deliverables over the life of this Strategic and Business Plan. Do you have any comments on what we are planning to do? Do you think we have placed our emphasis correctly in the way we planning years 1, 2, and 3 of the strategy? Have we missed anything?***

The comprehensive set of activities and deliverables set out in the paper are laudable and challenging. The BSB supports what the Legal Ombudsman is planning to do. The "Activities and Deliverables" appear to include (whether explicitly or implicitly) all relevant issues referred to in our responses to the questions above including: equality of access; structural processes that adequately cater for the most vulnerable clients; and effective feedback to approved regulators specifically on first tier complaints handling. The BSB would, however, emphasise the need to ensure within the first year of the plan that the mechanisms and agreed protocols for referral of conduct issues to approved regulators are working effectively.

Also, as noted above, there is a pressing need to ensure, in line with the operational protocol agreed with the BSB (and potentially other regulators) that the Legal Ombudsman puts in place adequate mechanisms to report on the quality of first tier complaints handling. Unfortunately this has not yet been achieved and is an issue that the BSB considers should be reflected more specifically and prominently in the Plans.

**Consultation question 7 – Do you agree with our approach to setting out our budget for 2012 -13?**

The BSB is, on the whole, satisfied with the approach to setting the budget for 2012-13 based on the limited information in the consultation paper. However, the BSB notes the reduction in income from case fees as compared to the original prediction. In relation to barristers, the case fee mechanism is unlikely to produce any level of significant income for the Legal Ombudsman.

Without additional data to that provided in the Strategy and Business Plan, it is not possible to comment effectively on whether the level of increase in the levy will be fair for the Bar in terms of the burden of costs apportioned across the approved regulators. More detailed information is required to assess this in the context of the reduction in predicted case fees and the Legal Ombudsman's casework/distribution of resources. These issues are outside the general nature of the scope of this consultation and will be taken up elsewhere at the appropriate time.

The BSB will reserve further comment on the operation of the case fee regime for the future consultation on these issues which is proposed as part of the Ombudsman's key activities in 2012-13.

**Consultation question 8 – Are there any other points or issues you wish to raise in relation to this Strategy and Business Plan that haven't been covered in your response to the other consultation questions? Is there anything that you disagree with? Please give your reasons.**

The BSB has no further comments it wishes to make in relation to the Strategy or the Business Plan.

Yours sincerely



**Baroness Deech**  
**Chair of the Bar Standards Board**