

Justice Committee

Oral evidence: [Pre-appointment hearing for Chair of the Office for Legal Complaints](#), HC 224

Tuesday 17 March 2020

Ordered by the House of Commons to be published on 17 March 2020.

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Members present: Robert Neill (Chair); Rob Butler; Maria Eagle; John Howell; Kenny MacAskill; Andy Slaughter.

Questions 1 - 25

Witness

I: Elisabeth Davies, preferred candidate for the Chair of the Office for Legal Complaints.

Examination of witness

Witness: Elisabeth Davies.

Chair: Good afternoon, Ms Davies. Thank you very much for coming to see us. This is a public meeting, although we are doing it without any public present for obvious reasons; it is a matter of public record, as you will appreciate. Initially, Members have to make declarations of interest. I am a non-practising barrister and consultant to a law firm.

Maria Eagle: I am a solicitor but not practising. I am not a consultant to anybody.

Kenny MacAskill: I am a solicitor but not practising. I suppose I should also declare that I was Justice Secretary in Scotland for many years.

John Howell: I am an associate of the Chartered Institute of Arbitrators.

Rob Butler: For just under two years before being elected, I was a non-executive director of HM Prison and Probation Service and a magistrate member of the Sentencing Council.

Q1 **Chair:** Having got all our confessions out of the way, perhaps I could ask just a couple of formal things to start with. We have seen your CV and the conflicts of interest and declarations form. Are there any other current or potential interests beyond those on the form that could be relevant?

Elisabeth Davies: No. One matter, which we may come to, is that as part of the recruitment process I focused particularly on business and financial interests in the context of Ministry of Justice support to the charities where I am a trustee. I declared that openly throughout the process and had discussions with the recruiters and recruitment panel about that. Those two charities are Support Through Court and the Prisoners' Education Trust.

Something I have been discussing more recently is that, if I was appointed, I would obviously declare contacts with specific legal service providers. I imagine I would do that, for example, in the context that my sister is a corporate lawyer; I would declare that in the context of a related party declaration.

I have already shared with the clerk to the Justice Select Committee the specific details of individual service providers that support Support Through Court. In some instances, that is literally pro bono access to a meeting room; in others, it is corporate donations, but I have already provided a comprehensive list of that. It felt premature and not appropriately necessarily to declare it earlier in the process, but I have done so and would imagine doing so if this proceeds.

Q2 **Chair:** You do not anticipate taking on any other potential interests of that kind.



Elisabeth Davies: No, absolutely not.

Q3 **Chair:** Even if you inadvertently ran into any risks.

Elisabeth Davies: No, I do not believe so.

Q4 **Chair:** On the form, in relation to political activity declarations you have ticked the box "None of the above apply."

Elisabeth Davies: No. As I indicated during the recruitment process, that is very much in terms of the timeframe specified in the forms. For openness, over 10 years ago I stood as a Labour party candidate in local council elections in south-west London. I stopped any political activity as soon as I became chair of the Legal Services Consumer Panel. If I am honest, that has not been a big adjustment for me. I think there is a huge amount of commonality in shared beliefs and whether one chooses to take them forward through political or public life. I believe that kind of shared commitment is there.

More recently, I have tried to encourage more women to enter public life. I supported the Fabian Women's Mentoring programme, but I do not support that any more. Those would be the key issues.

Q5 **John Howell:** Are you still a member of the Labour party?

Elisabeth Davies: No.

Q6 **Chair:** That is very helpful. Having got that background in your CV that we have talked about, let us think more broadly. In terms of those broader interests and experience, what do you think you bring? What do you think is the USP, if you like, that you have that makes you the appropriate person to chair this body?

Elisabeth Davies: For me, it comes down to three key things. The starting point is my understanding of and belief in the dual role of an ombudsman scheme. This comes down to its commitment to the role as both complaint handlers and raising standards—that commitment to systemic improvement. I think it is hugely important because confidence in any system is influenced by, first, what happens when something goes wrong and, secondly, how the system is seen to learn from that. Often, it is the motivation when we complain that we do not want this to happen to somebody else.

What I bring to it in that regard is borne of serving as senior independent director and chair of the quality committee at the Parliamentary and Health Service Ombudsman and the work done there reflecting on the option for a single public services ombudsman scheme. I am an accredited mediator and recognise the trend away from formal investigation to early dispute resolution, mediation and assessment. In the spring I will publish my academic research looking at the links between complainant satisfaction and impartiality in ombudsmen schemes. My starting point is very much the commitment to what it means to be an ombudsman scheme.



The second area for me is about knowing, valuing and respecting the legal services sector and the contribution it makes to access to justice. That is about knowledge and understanding of the sector in terms of both the regulators and representative bodies; it is understanding the challenges that are specific to the sector, including the number of silent sufferers within legal services. They are about 35% to 37% compared with 25% in other sectors.

As a member of the Civil Justice Council, it is obviously about working closely with the judiciary and its representatives, and continuing to engage more recently in Professor Stephen Mayson's independent review of legal services regulation. There is that deep-seated knowledge of and respect for the sector.

The final point, Chair, is the understanding and knowledge I have of this legal ombudsman scheme. I was chair of the Legal Services Consumer Panel from 2011 to 2016. I benchmarked the legal ombudsman against nine other ombudsmen and ADR schemes. I helped inform their service principles, and I have witnessed the journey they have been on and the challenges they faced along the way, and, indeed, the challenges they continue to face. For me, this is a very specific match. I have constructed a group of roles that for me has real consistency and coherence. A phrase that came up during the recruitment process was "overboarding". I am not an overboarder; I am not a generalist looking for the next non-executive appointment. For me, this is very much about continuing the focus on access to justice.

Maria Eagle: I have not heard the term "overboarding" before.

Elisabeth Davies: I think we will all be using it.

Q7 Maria Eagle: It is an interesting one. You obviously have an extensive set of experiences in similar roles, but, according to your CV, you still have quite a varied portfolio of interests and roles. Would you be willing to relinquish any of them on taking this up, or reduce your commitment, either because you perceive some kind of conflict between this role and any of those or you will just be too busy and there will be time pressures?

Elisabeth Davies: I have really thought about that. I have chosen my roles very carefully. I often describe my career as a Venn diagram with two circles: one is access to healthcare and the other is access to justice, and there is an interesting overlap in the middle. I have thought about the coherence of those roles and their compatibility and the shared learning across them. I am very realistic about my non-executive appointments. Above all, you need flexibility and capacity. This role requirement is 60 days a year. I think it needs at least two days a week, so that would be nearer 96 days a year certainly in the early months, recognising the climate that we are in at the moment, but I want to spend time in Birmingham.



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If I am successful, my non-executive commitments would be the Parliamentary and Health Service Ombudsman, the General Pharmaceutical Council and the OLC. I am comfortable that I can do those within five days a week. The Civil Justice Council works out at about one day a month, so I am comfortable that I can have the flexibility to take account of that.

As to my trustee commitments, I thought about those, because that is where I have the most flexibility and have the option of having meetings in the evening and doing the work when required. I am really committed to those roles. I think it is incredibly important in life that we all volunteer. They are roles where I volunteer; they are roles that keep me quite grounded in terms of spending time with service users sometimes. I think they help me with my non-executive commitments. There is not a conflict, if you like. I think the roles really support each other, plus I am confident that in terms of capacity I have the time to do this.

Q8 **Maria Eagle:** You can do it all.

Elisabeth Davies: I can. It sounds a really dangerous thing to say, does it not, but in particular because I have been doing academic research that comes to an end in late spring I do have the capacity? That sounds like I am tempting fate, but I genuinely do.

Q9 **Chair:** The academic research has a firm end, does it?

Elisabeth Davies: Yes. I need to get it published.

Q10 **John Howell:** Can I turn to what you would like to see in terms of the financial arrangements for the OLC? As you are probably aware, in the past, at least up until 2015-16, the OLC accounts were qualified by the National Audit Office. I think that has changed subsequently, but it does leave a question mark over the state of the OLC's finances, in particular the financial controls that are there. Would you like to explain what you would like to see there, how you mean to impose that and get a grip of it?

Elisabeth Davies: I am mindful that the budget agreement process is mid-process as we speak and is very much the responsibility of the existing chair. I am mindful of sensitivities around that and respect that, but, to go back to first principles in terms of what I would expect, when it comes to ombudsmen budgets I recognise the challenge in how you allocate resources between those dual responsibilities that I outlined at the beginning. There is an age-old tension for ombudsmen schemes between how you allocate the right budgets and resources in terms of complaint handling and the systemic improvement side of things.

None the less, the issues I want to see with regard to this budget going forward would be things like the case for any increase to be clearly demonstrated. In a way, I am going back to your question about what constitutes good governance in terms of budget handling, which is how I am interpreting it. That case for an increase needs to be clearly



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demonstrated. Any increase would need to be clearly tied to predicted performance improvement, and that would include customer experience and systemic improvement. There needs to be very clear engagement of the communication process with the sector. That is essential given how the legal ombudsman is funded.

The fee structure also raises some quite significant questions with regard to value for money, how that is assessed and indeed the visibility of that assessment. I am keen to move budget considerations on from what can be quite an erroneous cost per case into something that takes far greater account of the advice giving and the nature of the systemic improvement of the ombudsman. I have some clear expectations about how the budget process is handled going forward.

I am not sure whether behind your question is the issue about reporting back on the budget on an ongoing basis, or is it very much about the "agreement" point in terms of recognising the legacy of having those qualified accounts?

Q11 John Howell: It came out of having qualified accounts. Would you like to explain how within the circumstances of the OLC you are going to try to establish value for money?

Elisabeth Davies: I am very mindful of this. There have already been some very interesting conversations going on within the legal ombudsman and the OLC about this. If you look at what the legal ombudsman published, it started to move from a very blunt cost per case, which in essence is where you take the legal ombudsman's budget and divide it by the number of complaints it handles. That is when you come up with a cost per complaint.

It has already started to move on from that, recognising that within those complaints, for example, you have different categories of complainants. You might want to look with far greater meaning at what constitutes a low, medium or high complexity case. There is work you can do to make that figure a little more meaningful, or you could completely turn it on its head and look at value for money in its much broader sense. You can move away from cost per complaint. For example, some ombudsman schemes are using benchmarking and peer reviews. They are creating peer reviews of other ombudsmen and ADR providers. They are getting them to come in and assess the value of what they are doing, and that takes account of the thematic reviews and the broader element of what an ombudsman is doing.

If you think about the legal ombudsman, there are 110,000 contacts going in but only 7,200 or so result in a complaint. What about the value that that scheme offers in terms of all those people who have come in at the top? They might have come at the wrong time; maybe they have not resolved their complaint at the first tier; they might have come and it is out of scope or jurisdiction of the legal ombudsman, but that advice-giving element is a huge contribution to the legal services sector and the



value of the ombudsman. I would be keen to see that being taken account of going forward, recognising that some of those discussions may well already have started. Those are the sorts of examples I am quite keen to do, and I have seen them work very effectively in other ombudsmen schemes.

Q12 Kenny MacAskill: Speaking as somebody with different jurisdictional experience, could you perhaps tell me where you see the Office lying in the wider landscape of legal services regulation in England and Wales?

Elisabeth Davies: It is quite interesting to reflect on two things. Let me know if it does not quite feel on the right track for you. It is interesting to reflect on where the legal ombudsman and the OLC might fit into any wider review of the regulation of legal services.

One of the issues that is likely to come up through the review and one of the conversations that many in the sector have been having is recognition that people receive services from the unregulated community. At the moment, if you receive legal advice and support from an unregulated provider, you cannot complain to the legal ombudsman. There is an issue as to whether you as a consumer, irrespective of who provides you with access to a legal service, should be able to raise a complaint with the legal ombudsman if you are not happy with how that complaint has been addressed.

There are some quite interesting issues for the legal ombudsman going forward in terms of how it fits into both the regulated and unregulated aspects of the sector. I think it has the potential ability to switch that on if you have voluntary jurisdiction. A huge amount of thinking would need to be done on that, but that is possibly one of the key issues for the future of the ombudsman in terms of regulation.

Within the wider regulatory environment there is also the issue of own initiative powers. I alluded at the beginning to silent sufferers. One of the specific aspects of the legal services market is that 35% to 37% of people do not complain even if they are dissatisfied. That is noticeably higher than the averages for other sectors. There has been some very interesting research that tends to explain why this happens. If you have lots of potential complainants in a sector who are not complaining and may never complain because of issues around vulnerability, as an ombudsman should you have own initiative powers? Rather than needing somebody to complain to trigger a thematic review, say, on whether something needs to be done on raising standards, should you have own initiative powers so you do not have to wait for that complaint but can identify the issue as the ombudsman and move forward on that basis? There are some interesting issues on which the legal ombudsman can reflect in terms of both jurisdiction and scope.

I do not know whether there is also a broader issue behind your question about confidence in the legal system and where the legal ombudsman fits into that.



Q13 Kenny MacAskill: I think we are more interested in where you see it in the wider landscape, given the variety of self-regulation and other bodies, and where the overlaps are.

Elisabeth Davies: One of the challenges at the moment is that there is technical overlap. Given the ADR directive, at the moment you have the scenario whereby there is almost double jurisdiction for those who provide legal services under the auspices of the Legal Services Act. While they are rightly obliged under that Act to signpost complainants to the legal ombudsman, the ADR directive means they also need to signpost to an authorised ADR provider. I think there are only about four in the legal services market, and I do not think they receive many legal services complaints. None the less, that is something that needs tidying up in the future. There is obvious scope for potential confusion on the part of complainants there.

Q14 Kenny MacAskill: I think you have touched on this in part in reply to earlier questions. What do you see as your priorities in any improvements that you seek to make?

Elisabeth Davies: I have given that some thought. My starting point is that I am mindful that I have not sat down with the OLC board; I have not sat down with the LeO executive team and staff to find out what they think my priorities should be. It is incredibly important when you join an organisation to listen to what others have to say.

There is a handful of obvious priorities for me. The first is about building and rebuilding confidence in the legal ombudsman. Some of that is about recognising that this is an organisation that is trying to re-establish confidence on the part of both those who hold it to account and those who use its services. If you look at the responses to the strategy consultation, which has just closed, that demonstrates the importance of confidence building and relationships that lie at the heart of it. There is certainly a priority around rebuilding and building confidence.

There are priorities around quality and performance monitoring. That must be my absolute focus. There are some fundamental questions to ask about whether the right targets are being considered. When I think about the legal ombudsman, I think about the independent governance review carried out back in 2015. It has come a long way since, but it likened the scheme to a call centre that focused on speed rather than quality of decision making. It is absolutely critical that the OLC board keeps that real oversight piece. Timeliness is so important. Please do not think for a moment that I do not believe you need to prioritise timeliness, but it is part of that broader suite of indicators around quality. A key priority for me is to make sure that that balanced score card is right.

I have talked about the scope for commissioning a peer review. An independent review can be incredibly significant as well around that quality piece.



A third priority would be around the budget and the new strategy. I need to get up to speed on that very quickly. I am very aware that the Law Society and Bar Council have been openly critical of the proposed rise in the budget, so I need to get to grips with that very quickly.

The final area that I think needs to be a key priority is about confidence and capability and making sure we have a well-motivated staff going forward. That is about their confidence levels and motivation, recognising the challenges of recruitment and retention, which again the legal ombudsman and chief ombudsman have been very open about.

We are meeting at a very specific time. As I mentioned at the beginning, my priorities were always going to be to spend time physically in Birmingham and spend time with frontline staff, learning what they are doing, observing, listening in to their phone conversations, reviewing the latest staff survey and benchmarking it. All of those would be obvious priorities for me.

Q15 Maria Eagle: You made reference to the draft of the strategy and business plan that has been consulted on. One of the three strategic objectives in that is "developing the Legal Ombudsman Service to ensure it is appropriate for the evolving legal sector." That is obviously a draft and we do not know what the final one will say, but, assuming that that is one of the strategic objectives in the final draft, how do you think that should be done?

Elisabeth Davies: Some of that is alluding a little bit to what I referred to earlier in terms of the potential for broader regulatory changes. That is the key part of future-proofing, if you like, which I suppose is what that objective comes down to. That objective is also about recognising how the legal ombudsmen and ombudsmen schemes see themselves as having a place within the wider sector and their ability to respond to that. Some of that is the horizon scanning, which you can see ombudsmen doing far more of than perhaps they have done in the past.

I suppose some of this comes back to what I said at the beginning. When you are focused on complaint handling, you are such a fundamental part of having confidence in the broader system. Your responsibility, therefore, is to be very outward-looking in making sure you are aware and mindful of, and responsive to, what is happening in that broader system, not least because as an ombudsman you have two sets of customers effectively. You have the complainants and you have the legal service providers. Anything that is changing for the legal service providers has implications both as to how they are going to be regulated and in the nature and type of complaints that might be coming through from the individual complainants. My sense is that that strategic objective is about recognising that being ready to change and adapt.

In the beginning I alluded to my background as a mediator. Some of that is about recognising the need to be quite innovative; some of it is about being ready to respond to lawtech and online legal services delivery;



some of it is about recognising that more and more ombudsmen schemes are looking at the role of artificial intelligence and law technology themselves in how they do the decision making. There are lots of things that the legal ombudsman needs to have an eye on and be ready to respond to. That may not be through traditional investigations; it may be greater emphasis on early dispute resolution, mediation and so on. That is what I take from that.

- Q16 **Maria Eagle:** Do you have a sense of what you think the main challenges are for the sector, the providers, which you described as half your customers, as they are? What are the main challenges they are facing that might have an impact on how the Office should behave?

Elisabeth Davies: There are lots of potential changes coming from the perspective of the legal services providers themselves, whether that is about looking at new solicitor qualifying examinations; the potential for regulatory changes; and the emergence of lawtech and online provision, which is genuinely space to which a number of providers have had access for some time. There are real challenges and opportunities there. There are challenges because consumers and potential complainants have indicated they are quite concerned about the role of lawtech and what it means in terms of what happens to their data and the quality of advice they give, but from a provider perspective there are some real opportunities as well as to the services that can be offered.

I would go back to the challenges facing complainants. Some of this comes down to not losing sight of the nature of the legal services market. I do not see these issues necessarily changing. What you see when you look at complainants and service users is that there is an asymmetry of information and, therefore, an asymmetry of power. These might be quite infrequent purchases. It is quite different from other sectors. They might also be referred to as distress purchases. There might be a huge amount of emotional concern and content with regard to that purchase. Obviously, all of that has significant implications for how the ombudsman responds.

- Q17 **Chair:** You mentioned tech briefly. That is something to which the candidate information package refers—that is, making sure the OLC's technologies are robust enough. What is in your own background that gives you particular insight to have a proper non-executive chair's oversight of the quality of the work?

Elisabeth Davies: Some of this is about recognition. The ombudsman has gone through a significant modernisation programme, but that is very much ongoing. Many of you will be familiar with the fact that, once you have a new CMS system up and running, that is not the end. You have ongoing challenges in how you ensure that that continues to be fit for purpose, whether your staff are comfortable with it, how you can adapt it and so on. I am very familiar with that in an executive capacity, particularly in my work with arthritis care, which involved moving from 22



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different databases and spreadsheets, shall we say, to a single one. So, overseeing implementation is something with which I am very familiar.

There is a huge amount of learning from other ombudsmen schemes when it comes to this. The Parliamentary and Health Service Ombudsman has gone through a very significant technology and transformation process itself. As chair of the quality committee there, one of the issues I have been constantly seeking to monitor is the impact of that change on the quality of the decision making. Sometimes it is about the impact of that change on your ability to give me the data, insight and information that enable me to make that assessment about the quality of the decision making. That is not insignificant when you think of the nature of the relationship between the OLC and the legal ombudsman, because it is an accountability and performance management relationship. If I am going to be able to do my role and the board is able to do its role in the OLC, it is so dependent on the quality of the information coming through the legal ombudsman, which I am sure will come down to the quality of the CMS.

Q18 Rob Butler: I would like to move on a little bit to the relationships of the Office with others. One of the responsibilities outlined in the candidate information package is protecting the independence of the ombudsman in relation to decisions taken. Could you talk us through when you have had to stand up to strong external pressure and demonstrate your independence or the independence of the organisation you are leading?

Elisabeth Davies: I can give you an example in the context of legal services, if that is helpful, because it might feel particularly pertinent. I chaired the Legal Services Consumer Panel at a time when significant changes were being made to the legal aid system. At one level, one set of advice I got was that I should not be saying anything about the changes to legal aid. I felt it would have been completely inappropriate that a body with the word "consumer" in its title should be silent when such significant changes were potentially happening.

In that context, I worked with colleagues and looked at where we could legitimately have a voice and bring something meaningful to the debate that was evidence led. It was very much around client choice of provider. Then it was about putting together submissions and consultation responses and being very balanced and reflective as to how that information was shared. It involved coming to a former Justice Select Committee as well; it involved media handling and interviews around that.

When I look back on that, first, I am really pleased that the Legal Services Consumer Panel was engaged. Secondly, I am pleased that we were able to say and do something that was informed about evidence and our remit. It was true to our remit and did not involve scope creep. Thirdly, changes were made to the issue around the client choice provider, which the then Lord Chancellor, on the Floor of the House, said was very much dependent on and resulted in the quality of the evidence



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that the Legal Services Consumer Panel had shared. There were lots of moments along the way that gave me reassurance that we had done the right thing, but I am very mindful in some instances of the need to hold my ground and be absolutely clear about what the right thing was.

Q19 Rob Butler: You mentioned the media as part of that response. What do you think at the moment is the perception of the OLC by the public and the media?

Elisabeth Davies: This is an organisation that is very much seeking to rebuild confidence both among those who hold it to account and those who use its services. I would suggest that the legal ombudsman is seen as an organisation that is mid-improvement journey. There is a recognition that on some things there have been improvements. Look at how it handles legacy cases, the size of the pre-assessment pool and how long complaints are waiting in the pre-assessment pool. There have been some definite areas of progress that it is important to recognise.

Similarly, if you look at those voluntary assurance letters, that progress is not consistent enough. There are real questions that they themselves would raise and recognise as well in terms of the capacity and capability of staff to be able to continue to deliver that progress going forward. For me, it is an organisation that is mid-improvement journey and I recognise in my priorities that there is work I need to do in helping to rebuild confidence in the organisation.

Q20 Rob Butler: I wonder whether a member of the public would come up with the expression "mid-improvement journey". They will think it is either good or bad, or it is useless or fantastic.

Elisabeth Davies: That raises a really interesting question around the awareness of the legal ombudsman. Last time I saw any statistics about this unprompted awareness of the legal ombudsman was between 20% and 30%. You might think that is quite low; you might think that is actually quite high when you think that is unprompted awareness. But for me there is a bigger question about what awareness level there should be in the legal ombudsman.

If these are quite infrequent purchases that a lot of people make in legal services, should you be aiming for raising awareness and understanding of the ombudsman throughout? Should all of us know something about the legal ombudsman with a view to reaching a point where potentially we might need it, or do we focus on the right information at the right time to the right complainant? In that case, you would be looking at the client care letters that legal service providers offer to all their clients. How is access to the ombudsman and redress being articulated within that letter?

It is an absolutely fair point. Of course, the public will not think "mid-improvement journey", but my question back to you is: what do the public think about the legal ombudsman unless they have used it?



- Q21 **Rob Butler:** If you wanted to improve awareness—I take your point about those two arguments—what would be your approach to using the media as part of it, and what experience do you have in handling the media?

Elisabeth Davies: I am aware of your background. I would need a little bit of convincing about the value of investing time and energy into raising awareness of the legal ombudsman per se almost across the population. You have to question whether that is absolutely the right thing to be doing. I would push back a little bit and recognise that. I am not convinced we are looking for blanket awareness. We have to make sure that people know about the legal ombudsman at the point they need it.

Putting that point aside, I have had the media training. I go to my refresher courses and have done both radio and TV interviews. What I go back to and what I have always thought about throughout this process is: what profile does the chair of the Office for Legal Complaints need?

The OLC has no responsibility over individual decisions. I think that where the chair of the OLC has a legitimate voice is likely to be more around the systemic improvement and raising standards piece. It may well be misleading and potentially quite unhelpful to have the chair of the OLC talking about individual cases and decisions, unless there is a broader thematic inside piece. There is a little bit of unpicking, reflecting on the nature of the governance and going back to that and being true to that.

Rob Butler: Absolutely; thank you.

- Q22 **Chair:** Language can be important. Those of us who serve on public bodies often talk about improvement journeys perhaps or of the purchase of legal services. As for the man or woman in the street and whether it is any good or not, they say they go to their solicitor. How do we get around the fact that there is a tendency for all of us to talk in a bit of quango-ese? Is that something you are perhaps conscious of falling into?

Elisabeth Davies: I suppose I am very conscious of it. If you reflect on what we were talking about at the beginning in terms of my working life, I spend a lot of time working with different audiences. I spend a lot of time working with service users. I would like to reassure you that I would never, ever use the phrase “mid-improvement journey” with a service user. I can say that absolutely categorically.

None the less, it comes down to the ability in life to adapt your language to a different audience. This comes back to Mr Butler’s earlier point. It is not just about use of the right language; it is getting the right language in the right way at the right time. For some of the things it comes down to who is sharing that information. Do potential complainants want to find out about complaint systems via the client care letter or via the solicitor, or do they want to find out about it through trusted third parties, whether that is citizens advice or whoever it might be? Language absolutely matters, as does how you share the right information with the right people at the right time.



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Q23 Chair: Fair enough. You have talked about the complex relationships within this sector anyway, but what about the relationship with Parliament as a whole? You deal with overseeing a body that deals with complaints. We get complaints. How do you see your role in developing, sustaining, or whatever, the relationship with Parliament, this Committee and more generally with individual Members?

Elisabeth Davies: As to the relationship with the Justice Select Committee, there are lots of different elements to it, but, at its simplest, I suppose it comes down to its sponsorship, scrutiny and support, particularly my learning from my role with the General Pharmaceutical Council where it is absolutely essential that fitness-to-practise decision making is entirely independent of the GPhC. Independence is never an excuse for not sharing information, nor is it an excuse for not having accountability. Particularly in the case of the legal ombudsman, that accountability needs to be visible, because one of the challenges with an ombudsman scheme is that, if as a complainant you are not happy with a decision the ombudsman makes, your only option is to go for a judicial review. Complainants will quite often ask the question, "Who holds the ombudsman to account?"

Interestingly, I do, potentially, as chair of the Office for Legal Complaints. Given the governance framework, you have the Legal Services Board and the MOJ as well. Given the relationship with the Justice Select Committee, there is the potential for an accountability relationship, but it is quite nuanced. The legal ombudsman also has the potential, not least through its systemic reviews, to give insight and information to feed issues into your role.

It is a two-way relationship that is quite nuanced and complex, but, as you say, so are many of the relationships that the legal ombudsman and the OLC must have. It is entirely compatible for me that the relationship should be one of both accountability and scrutiny, but also support in using the thematic reviews and the insight potentially to inform your work programme.

Q24 Chair: Suppose somebody says, "Where is the added value that the OLC gives?" You have an ombudsman; you have the OLC.

Elisabeth Davies: It comes down to the issue of governance, does it not? If you brought literally any ombudsman into this room and asked them about governance, they would make the case for saying their governance is uniquely complex and challenging. Perhaps I could just reassure you in terms of language again. I would not use this language to service users, but it is the lines of defence model, is it not? What you get in the OLC and governance structure is a separate line of defence from the actual ombudsman and the decision it makes.

You also get independence. That is critically important with any ombudsman scheme. By having the OLC and the legal ombudsman, you are separating that kind of accountability from actual decision making



and individual cases. Those would probably be the two main added value aspects of governance. You are also probably respecting the legacy of the inception of the Legal Services Act, which recognised that absolute desire to improve complaint handling within legal services, which was not good enough.

Q25 **Chair:** Are there any further questions from Members? Ms Davies, is there anything else you would like to add?

Elisabeth Davies: My only point is perhaps to reassure you in terms of reflections. We talked about declarations of interest and political interests at the beginning, Chair. I want to reassure the Committee about the perception of consumer bias. As the former chair of the consumer panel and somebody who has worked closely with service providers, this is something to which I have given a great deal of thought. I want to make the most of this opportunity to reassure you that there is no innate incompatibility between being customer-focused and being impartial.

Gone are the days, thankfully, when ombudsmen schemes did not believe their staff should demonstrate any empathy. I do not know whether it is an urban myth or it is true, but one of the ombudsmen schemes allegedly used to recruit people on the basis of an advert that said, "Do you like working in a library? If so, this role could be just right for you." I use that as an example of gone are the days when ombudsmen did not recognise that they had a responsibility to be responsive to their customers, who are both service users and providers.

I want to recognise my understanding of the needs of complainants and the challenges they face. I think it is a good thing. Fundamentally, complaint systems have to be able to respond to those who make a complaint. There is no incompatibility between that and the impartiality of decision making, but complaint systems need to work and respond to the needs of complainants. I want to make the most of this opportunity to say that not only is it not a bias but it is potentially something that is quite helpful going forward.

Chair: That is very helpful. I do not know whether anybody has a follow-up. Ms Davies, thank you very much for your time and trouble in giving evidence to us. We are very grateful to you.