

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	119.13
<i>Date of meeting</i>	31 March 2022	<i>Time required</i>	n/a

<i>Title</i>	Horizon Scanning – March 2022
<i>Sponsor</i>	Steve Pearson – Deputy Ombudsman
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

Executive summary
<p>The board are asked to note the contents of the Horizon Scan.</p> <p>The report covers developments in our external operating environment over February and March 2022. The content includes the implications for the introduction of the no-fault divorce from 6 April 2022- particularly around impact it could have on the number of low-complexity cases being brought to LeO. The report also outlines developments and consultations in the wider field, such as the proposal to implement fixed recoverable costs for clinical negligence claims and ongoing issues around ground rents.</p> <p>Wider regulatory issues which may impact on the Legal Ombudsman are also included- of particular note is the LSB consultation on on-going competence and the closure of the Solicitors Indemnity Fund.</p>
Recommendation/action required
Board is asked to NOTE the update and analysis provided.

Impact categories

High – this issue has the potential to alter our day-to-day operations within the next year and may require a direct response.






Medium – this issue could necessitate policy development on an issue; it may affect the environment in which we operate and/or is likely to affect us directly within the next three years.

Low – this issue may have an effect on our stakeholders but is unlikely to require any action from us and/or the issue is unlikely to develop for five years or more.

Horizon Scan – March 2022

Overview

Likelihood score refers to how probable it is that we will be impacted. Demand is effect on complaint volumes.

Issue	Impact	This will affect...	Likelihood (1-5)	Demand
No-Fault Divorce	Medium	Reduction in low-complexity cases coming to LeO	2	
Fixed Clinical Negligence costs	Low	Access to justice	3	
Increase in the wills and probate market	Low	Complaint volumes	3	
Leaseholder and ground rent concerns	Low	Appropriate advice to customers/increase in complaints	4	
Closure of the Solicitors Indemnity Fund	Low	Access to justice/remedies and awards	3	

Thematic issues and news

No-fault divorce

➤ *Medium impact*

The Government's 'Divorce, Dissolution and Separation Act 2020' will come into force on 6 April 2022, reforming the divorce process to remove the concept of fault. Under the new laws, couples will be able to get divorced solely on the basis that the marriage has broken down, without needing to cite one of the 5 reasons for divorce. The new legislation will:

- replace the 'five facts' with a new requirement to provide a statement of irretrievable breakdown
- remove the possibility of contesting the divorce
- introduce an option for a joint application
- make sure language is in plain English, for example, changing 'decree nisi' to conditional order and 'decree absolute' to final order

These changes will also apply to the dissolution of civil partnerships. This has the potential to reduce complaints that come to us about matrimonial matters, as retainers may be shorter and clients generally happier with outcomes. Similarly, the introduction of the 'no-fault' element of a divorce proceeding may mean that the Legal Ombudsman sees a potential reduction in the number of lower complexity family law complaints coming into the organisation.

Fixed clinical negligence costs

➤ *Low impact*

The Department of Health and Social Care (DHSC) has launched a consultation into the proposed rollout of fixed recoverable costs and a new streamlined process for claimants pursuing medical negligence claims up to the value of £25,000.

The aim of the consultation is to:

- support timely and cost-effective resolution
- ensure that the legal costs of claims are more proportionate

Due to the vast majority of medical negligence claims being complex, difficult to investigate and lengthy due to the input required, the costs associated with these cases can be high.

The main concern amongst legal professionals is that the implementation of the new proposals will result in changes that will limit access to justice for people with legitimate claims. There are concerns that a number of claims will be made uneconomical and that it will mean legal professionals will not take on lower-value claims.

The wider repercussions are that smaller firms may be disproportionately affected due to the nature of a higher volume of lower-value cases. This may mean businesses are no longer viable due to the financial implications of fixed recoverable costs.

Wills and probate market tops £2bn

➤ *Low impact*

A report by IRN Research has shown that in 2021 the wills, trusts and probate market passed the £2 billion pound mark for the first time. This is largely due to the increased demands for will writing, which has been driven by the growing demands for services during the pandemic.

The report shows that as well as an increase in demand for probate and estate administration services, there has also been a growth in the more holistic services that firms are offering around preparing for changes in later life.

IRN research have suggested that there is likely to be a short-term jump in work volumes due to Covid, with growth in the industry expected to reach a value of £2.5bn by 2025. 52% of respondent in the study had used a solicitor to draft their will and therefore for LeO this may mean an increase in the number of people seeking redress in the long term.

Concerns over inadequate advice to leaseholders

➤ *Low impact*

The Solicitors Regulation Authority has outlined concerns that clients are not receiving appropriate advice on onerous clauses in leases, particularly around ground rents. As part of a guidance note issued by the SRA, they have iterated that the duty to provide competent advice is not discharged solely by describing the “current” rent charges, referring to the wording as being a “standard clause” or telling clients to read the lease.

The issue of ground rents is currently a high profile one, particularly around ground rent clauses for new-build properties that increase exponentially over years.

The guidance said solicitors needed to ensure their clients understood the implications of buying a leasehold property and any material clauses, including explaining to the client the effect over time of clauses which increase the rents payable.

The guidance note issued by the SRA also outlined that some clients may also need to be advised of other risks that could change the nature of the relationship between the client and the freeholder, which could be particularly significant if rent falls into arrears.

Whilst the issues outlined may constitute regulatory intervention, LeO should be aware of the situation and continue to monitor for any trends which are apparent in complaint brought to them around ground rent issues.

The Competition and Markets Authority have also recently intervened on the issue of ground rents- removing the terms that cause ground rents to double in price. In some cases, this had meant home owners being ‘trapped’ in properties they are unable to sell or mortgage due to inflated ground rent costs.

Solicitors Indemnity Fund

➤ *Low impact*

The Law Society and the Legal Services Consumer Panel have both jointly opposed the closure of the Solicitors Indemnity Fund (SIF) and the post six year run off cover. The SRA held a

consultation ending in February 2022 which looked to find a workable alternative to the SIF. In its response to the consultation, the Law Society said the SRA has not shown how closing the SIF would have any benefit to consumers, either in terms of reducing the price of legal services or increasing consumer choice.

Continuation of the SIF could be supported through the introduction of a levy estimated at £16 per solicitor or £240 per firm each year.

The Legal Ombudsman should be mindful of the impact the closure of the SIF could have on the ability for consumers to seek appropriate redress Fund and the impact this could have on the remedies we award.

Consultation responses and publications

LSB Competence Consultation

The Legal Services Board recently closed a consultation which outlined a draft statement of policy on the outcomes regulators should pursue to ensure legal professionals have the necessary and up to date skills, knowledge, attributes and behaviours to provide good quality legal services.

The draft statement is a risk-based, outcome-focused flexible framework for the nine legal regulators to apply across their regulated communities. The LSB have stated that this is in clear response to consumer research which has shown there is a “mismatch” between what the public expected and what the profession was doing to ensure competence.

There has been some concern from regulators about the scope of the plans. The Bar Council in particular have outlined their concerns that it not only risks infringing on the Legal Services Act but that the LSB’s evidence is also based on fundamentally wrong assumptions.

The LSCP response highlighted the need for firmer mandates for high-risk areas of practice, especially where there is already evidence of incompetence. The Law Society also agreed with the need to target high risk areas.

The Legal Ombudsman will continue to follow the progress of this work and will continue to work with regulators to help identify firms where complaints handling training may be required.