

<i>Meeting</i>	OLC Board	
<i>Date of meeting</i>	December 2021	Item presented for information

<i>Title</i>	Horizon Scanning – December 2021	
<i>Sponsor</i>	Steve Pearson – Deputy Ombudsman	
<i>Status</i>	OFFICIAL	
<i>To be communicated to:</i>	Members and those in attendance	

Executive summary
The board are asked to note the contents of the Horizon Scan.
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 – December 2021

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
SRA propose increase in fining powers	Low	Compliance with Ombudsman decision making	4	↓
CLC OLC Levy approved	Medium	First tier compliance for CLC regulated service providers	3	↓

Thematic issues and news

SRA propose increase to fining powers

➤ *Low impact*

The Solicitors Regulation Authority is proposing an increase in its fining powers alongside the introduction of 'fixed penalties' for low-level offences. This is being consulted on in an attempt to manage the number of cases going to the Solicitors Disciplinary Tribunal (SDT) and resolve issues much more quickly than the current regime allows for.

The current maximum fine the SRA can issue to law firms is £2000 but the consultation outlines the aim to raise this to £25,000. As part of these changes, the SRA are also seeking to introduce a system which considers the income of firms when setting fines, with the power to issue penalties up to 5% of annual turnover. This would also mean that senior equity partners found to have breached rules could face much larger sanctions than junior solicitors who committed similar offences.

Another proposal is to introduce a schedule of fixed penalties of up to £1,500 for lesser issues that can be dealt with more efficiently. The SRA state that as well as allowing more straightforward cases to be dealt with easily, it also increases transparency on how penalties are applied. There is a suggestion that the fixed penalty will be £800 or less for a first offence and up to £1,500 for any subsequent offence.

Non-compliance with a Legal Ombudsman decision is one of the highlighted areas for which a fixed penalty could be applied. Should the proposals be approved, it is likely that this would have a positive impact on the number of firms not complying with an ombudsman decision.

We will continue to engage with the progress of these proposals to understand the likely impact on the organisation.

CLC Levy approved

➤ *Medium impact*

The LSB have approved the application from the Council for Licensed Conveyancers, to change how they collect the OLC levy from their regulated community.

Approval means the CLC will divide the OLC levy into two parts: a basic fee that all firms pay towards the upkeep of the ombudsman, and a usage fee based on the number of cases from a firm that have been accepted for review. The original application sought approval for an 80-20 split, with 80% of the fee being paid for by the firms who generate the most complaints. However, approval is based on a revised proposal which sees 30% of the OLC levy being charged to the firms who have had complaints made against them. The intention is to increase this to 80% over the next four years.

LeO raised concerns about the levy change, as the proposals do not distinguish between firms who have complaints upheld against them and those that do not. There are also concerns that the proposals could drive firms to make business decisions to keep a complaint in-house, rather than

it being escalated to an Ombudsman, due to the potential gravity of the levy charge being larger than the award applied.

As of next year, two practices will pay an extra £16,000 and £12,000 respectively, 16 firms will pay between £5,168 and £1,044 more, and 33 practices will pay between £821 and £25 more.

Whilst LeO is supportive of the aim to encourage firms to improve service, they are also concerned that the charging mechanism could also impact on the transparency of service quality. CLC ensures that they will monitor behaviours to ensure firms are not paying to keep complaints in house.

Consultation responses and publications

LSB issue findings on link between quality and price of Legal Expenses Insurance

The LSB is calling on the insurance industry and legal service providers to support consumers by raising awareness of legal expenses insurance, incentivise better quality products and build trust through greater transparency. The findings on the correlation between price and quality is a clear indicator on the importance of a stronger suite of quality indicators that go beyond price.

The Financial Conduct Authority estimates 15 million adults may have legal expenses insurance, but many people may be unaware they exist, or unsure of what they cover. LSB survey data indicates that as few as 250,000 people a year use insurance to fund legal work. This suggests that many consumers are not using from the insurance products they own.

The LSB have stated that consumers need better information to support them exercise choice and purchase good quality legal expenses insurance suitable for their needs. This provides a good link into the transparency work that is being undertaken within the wider legal services sector to improve transparency of data to consumers and provide better indicators of quality to inform choice.

Law Society does not support first tier complaints data being published by regulators

In response to the LSB Draft Statement of Policy, the Law Society has responded to state that they do not believe regulators should be required to publish complaints data in their efforts to improve transparency. This is in response to the LSB proposing that frontline regulators might consider providing data on law firms' performance, which could include complaints data and error rates.

The Law Society has said that it is in favour of consumers having more information before choosing a provider but outlined concerns about relying on complaints data as it will be difficult to provide a consistent set of objective data given variabilities and complexities within legal services.

The Law Society also raised concerns that first tier complaints data will not be contextualised, which is a concern that the Legal Ombudsman has previously raised about publishing complaints decisions.

The LSB also proposes that consumers have easier access to providers' disciplinary and enforcement records and published decisions made by the Legal Ombudsman. The Legal Ombudsman is continuing to engage in this work and is working with the SRA and Digital Comparison Tool providers to understand where we can make change.