

<i>Meeting</i>	OLC Board	<i>Paper No.</i>	120.13
<i>Date of meeting</i>	26 May 2022	<i>Time required</i>	n/a

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

<b>Executive summary</b>
The board are asked to note the contents of the Horizon Scan.
<b>Recommendation/action required</b>
Board is asked to <b>NOTE</b> 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 – May 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
Fixed recoverable costs	Low	The number of litigation complaints coming into LeO	3	
Divorce applications on the rise	Medium	The number of complaints coming into LeO around divorce services	3	
Stephen Mayson report	Low	Currently unregulated services coming under jurisdiction	1	

# Thematic issues and news

## Fixed Recoverable Costs

The government intention to impose fixed recoverable costs (FRC) across the fast-track and in most money cases worth up to £100,000 has been delayed by six months.

In April 2019 the MoJ launched a consultation into extending fixed recoverable costs to other (higher value) areas of civil litigation following the success of this model for low-value personal injury cases- with the intention that it would come into force from October 2022. This has now been extended by six months to April 2023.

The reforms largely mirror the recommendations of Sir Rupert Jackson from 2017 and include new rules on penalising delays in the resolution of cases, with an uplift where a Part 36 offer has been beaten or one party has engaged in 'unreasonable behaviour'.

Fixed recoverable costs prescribe the amount of damages that can be claimed back from a losing party in civil litigation. They are used to keep disputes from continuing for an unnecessarily long period, allowing costs to be controlled and kept to a manageable level.

Once the fixed costs regime comes into force it may have an impact on the number of cost complaints in litigation cases that LeO sees.

## Divorce applications up 50%

Following the introduction of the 'no fault divorce' reforms, HM Courts & Tribunals Service has received 3,000 divorce applications in the first week- a 50% rise on the weekly average.

Official statistics show that last year, a total of 107,724 divorce petitions were filed - which works out at 2,071 applications per week.

Whilst only minor technical problems have been reported in some cases, the huge increase in the number of divorce applications being processed by legal services providers may give rise to an increase in the number of complaints that are made to the provider and then progressed to the second tier.

## Mayson Report

Stephen Mayson, Emeritus Professor at University College London, has published his report 'Consumer harm and legal services: from fig leaf to legal well-being' on 21 April, in which he outlines the need for some form of regulation to be extended to currently unregulated providers to improve consumer wellbeing and public confidence.

The report outlined a call for consumer dispute resolution to be mandatory across the legal sector- particularly in relation to the regulation of providers of will-writing, estate administration, employment and lawtech services. It argues for a shift in the emphasis of regulation from the avoidance of consumer harm to a state where 'consumers can have confidence in their choice of legal advisers without burdensome enquiry about their regulatory status.

Whilst there is no immediate response from the Government on the proposals outlined in Professor Mayson's report, should the Legal Services Act be amended to incorporate the regulation of further areas of law, this would have an impact on what would fall under LeO's jurisdiction and therefore increase the number of complaints into the organisation.

## Consultation responses and publications

### SRA- publishing decisions

The Solicitors Regulation Authority is reviewing the way it publishes decisions about disciplinary and regulatory action and has opened a [consultation](#) on the principles that will guide how information is made available to the public and profession.

The purpose of publishing decisions about individuals and firms is to give the public and others, such as employers, the information they need to help them make informed choices about engaging a solicitor.

The current approach, which was introduced 15 years ago, details decisions about disciplinary and regulatory action as an outcome attached to a solicitor or firm's public record. This information is published online, is available through the Solicitors Register, and can be accessed by external online search engines.

Details of sanctions imposed - such as rebukes or fines of up to £2,000 – prosecutions at the Solicitors Disciplinary Tribunal (SDT), the closure of firms, or conditions imposed on an individual solicitor currently remain publicly accessible for at least three years from initial publication. Details of certain types of the most serious sanction, such as strike offs or suspensions, remain public permanently.

The consultation is seeking views on whether the current approach strikes the right balance between protecting the best interests of the public, versus being fair and proportionate to the profession. It looks to consider what is published, in how much detail, when and for how long information should remain public.

Questions include whether there are benefits to extending or shortening the length of publication of regulatory decisions and whether it might be beneficial to link the length of publication to the level of severity of the regulatory decision.

The consultation is open until 2 August 2022. An OLC or LeO response will be submitted as part of the consultation.

### LSB statement of policy

The Legal Services Board (LSB) has published a statutory statement of policy on empowering consumers to better access information about the service and quality of legal services providers.

Developed following a consultation and engagement with the legal services regulators and others across the sector, the statement outlines how the regulators should ensure that people and small

businesses who need legal advice have the information they need to shop around and choose the provider most suited to their legal needs.

With the published statement, the LSB has set expectations for the regulators to ensure legal services providers offer useful information to consumers about the cost and quality of their services and on redress and regulation. This includes an explicit expectation that:

*“Regulators are expected to put in place regulatory arrangements and undertake other appropriate activities to ensure the provision of useful information that best enables effective consumer choice on the quality of legal services providers to consumers. Such information should include as a minimum:*

- *a. Providers’ disciplinary and enforcement records, including any sanctions; and*
- *b. Published decisions made by the Legal Ombudsman on complaints about providers.”*

The LSB are not explicit in how they expect regulators to publish this information but outlines the expectation of regulators to make meaningful contributions to cross-sector initiatives, such as Legal Choices. LeO is currently in the process of signing a data sharing agreement to publish Ombudsman decision data on the Legal Choices website.