

### Horizon Scan- July 2023

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|---|---------------------------------------|-------------------------------------|
| <b>Meeting</b>  | OLC Board                             | For Information<br>Paper No: 128.11 |
| <b>Date of meeting</b>  | July 2023                             |                                     |
| <b>Title</b>  | <b>Horizon Scan- July 2023</b>        |                                     |
| <b>Sponsor</b>  | Steve Pearson- Deputy Chief Ombudsman |                                     |
| <b>Status</b>   | <b>OFFICIAL</b>                       |                                     |
| <b>Executive summary</b>  |                                       |                                     |
| The Board are asked to note the contents of the horizon scanning paper. The paper details ongoing conversations around the Legal Ombudsman's position on cases impacted by the Belsner ruling, the latest findings from the Legal Services Consumer Panel's tracker survey, and the findings from the SRA's quality indicators pilot. |                                       |                                     |
| <b>Recommendation / action required</b>   |                                       |                                     |
| Board is asked to <b>note</b> the update and analysis provided  |                                       |                                     |
| <b>Equality Diversity and Inclusion</b>   |                                       |                                     |
| <b>EDI implications</b>   | <b>No</b>                             |                                     |
| N/A   |                                       |                                     |
| <b>Freedom of Information Act 2000 (Fol)</b>  |                                       |                                     |
| <b>Paragraph reference</b>  | <b>Fol exemption and summary</b>      |                                     |
| N/A   | N/A                                   |                                     |

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### 1. Overview

| Issue          | Impact | This will affect... | Likelihood (1-5) | Demand  |
|----------------|--------|---------------------|------------------|---|
| Belsner update | Medium | Complaint numbers   | 3                |  |

### 2. Thematic Issues and news

#### Complaints relating to Belsner ruling

In October 2022, the Court of Appeal ruling in *Belsner v CAM Legal Services Ltd* addressed the issue of solicitors' retainers and the cost information a solicitor is required to give a client.

The appeal stemmed from a challenge by a client to the fees retained by her solicitors, who had acted for her in her claim against a third-party for damages for personal injury arising from a road traffic accident. The initial challenge was upheld but was subsequently overturned by the Court of Appeal.

LeO's external publication "An ombudsman's view of good costs service" was quoted in the Court of Appeal hearing and the Master of the Rolls was keen in his judgement to advocate using the Legal Ombudsman as an alternative to legal disputes:

*"The Legal Ombudsman scheme would be a cheaper and more effective method of querying solicitors' bills in these circumstances, but the whole court process of assessment of solicitors' bills in contentious and non-contentious business requires careful review and significant reform."*

There are a number of firms whose business model is centred around challenging the fees charged by solicitors. The Legal Ombudsman is beginning to see complaints come through about costs which are being pursued by firms on behalf of their client. Whilst the number of complaints is currently small, there is significant potential for a much larger number of claims to start being referred. This has the potential to pose a risk to capacity and resource levels across the Legal Ombudsman.

There are a number of quite significant points of policy, in relation to the assessment of these complaints, that the Legal Ombudsman needs to consider in order to mitigate the risk of potential inconsistency of outcome or approach.

The Legal Ombudsman has always been clear on the scope of its jurisdiction in that cost complaints can always be investigated. However, these cases do present an opportunity for the Legal Ombudsman to take a prominent and proactive stance on this issue. It is therefore critical that the Legal Ombudsman's position is clear and consistent. There are also additional policy issues around qualified representatives bringing complaints to the Legal Ombudsman on behalf of lay clients and those representatives' ability to charge and recover their fees for bringing complaints to the Legal Ombudsman.

These policy issues and associated risks will need to be determined before the Legal Ombudsman progresses these complaints. As those decisions are made and as complaints progress through the system, the Legal Ombudsman will continue to monitor the consistent application of our policies and the potential impact on resource.

### Consultation responses and publications

#### Legal Services Consumer Panel- Tracker survey

The latest [LSCP tracker survey report](#) has shown a number of interesting statistics in relation to legal services- with this year being the first time that shopping around has declined since the survey started in 2012 (43% down to 39%) and the use of the unbundling of services continuing to increase (18% to 19%).

The ease with which information about legal services was found has also decreased when compared to 2022. This includes how long the service would take (57% down from 62%), professional indemnity insurance cover (50% down from 55%), whether there is an ombudsman to complain to (58% down from 60%) and quality of service (64% down from 65%).

The report is based on 3500 completed surveys. In relation to service provision, the tracker survey showed that:

- Satisfaction with the service received and the outcome of the legal matter was significantly higher among those who felt they had a great deal or fair amount of choice (91% satisfied with service, 93% satisfied with outcome), compared to those who felt they had little or no choice (62% satisfied with service, 65% satisfied with outcome). Those who shopped around were also more likely to be satisfied with the service (86%) and outcome of their legal matter (88%) than those who wanted to shop around but did not know how to (61% satisfied with the service, 66% with the outcome).
- In terms of the individual aspects of service provision, satisfaction is high across all areas. Satisfaction with the clarity of information on the costs to be charged has seen the greatest increase since 2012 (from 76% in 2012 to 83% in 2023).
- For dissatisfied consumers, 49% said they would first complain to the firm itself, an increase from 44% in 2022. The proportion of those who were dissatisfied with the service they received who did make a formal complaint to

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the service provider has meanwhile fallen compared to 2022, from 28% to 25%. However, it is higher than the proportion who reported this in 2021 (18%).

- Consumers who expressed satisfaction with the service they received from their lawyer were twice as likely to have received face-to-face services than those dissatisfied with the service.

In relation to raising a complaint when dissatisfied with the service, the survey showed:

- Most raised concerns with the service provider but did not make a formal complaint (36%). This was more common than in 2022 (31%) but only slightly above the level reported in 2021 (34%).
- 25% made a formal complaint to the service provider, down from 28% in 2022, but still above the 18% who reported doing so in 2021.
- Just over a quarter did nothing (26%), slightly higher than in 2022 (24%). The proportion doing nothing is still lower than that in 2021 however (36%), and in the longer term is also lower than the 42% who stated they did nothing in response to being dissatisfied in 2022.

The Legal Ombudsman plans on meeting with the LSCP over the coming months to discuss the results of the tracker survey, and more widely the approach to improving learning and insight. This will include points around transparency and the availability of meaningful information which consumers can use as an indicator of quality.

### **SRA Quality Indicators Pilot**

The SRA, Council for Licensed Conveyancers, and CILEx Regulation ran a pilot scheme looking at quality indicators within legal services and how the sector could potentially make improvements in this area.

The pilot brought together nine leading digital comparison tool providers with 70 law firms for a one-year period between 2021 and 2022. It also saw consumers, law firms and a wide range of stakeholders contribute to research, surveys and focus groups on related topics. The Legal Ombudsman took part in a number of events with the SRA, including discussions on using complaints data as an objective indicator of quality.

The key findings were:

- There is a clear distinction between engagement with review websites and price comparison tools. In general consumers found review sites helpful, especially if they include indicators of quality not found on a firm's website.
- Very few firms engage with price comparison sites, with them often being seen as a tool to enable a 'race to the bottom' - especially if it is just based on price.

### **Review sites**

- The pilot found that 88% of people asked said they will use a review site when shopping for products or a new service, but this dropped to 22% for legal services.

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- Firms who do encourage the use of review sites mostly point clients towards Google reviews, Trust Pilot and ReviewSolicitors. Two thirds of firms are using these reviews to attract new business.

### Price comparison sites

- Only 24% of consumers said they were aware of comparison sites for legal services.
- Pro-active engagement by firms with comparison sites was virtually non-existent. This is often because of the difficulty in accurately pricing services before meeting the client and firms already being required to publish certain price information on their websites under the SRA's Transparency Rules.

### Complaints data

70% of the public who were asked said that Legal Ombudsman data was an important indicator of quality. However, DCTs were hesitant to republish the Legal Ombudsman decisions data, citing concerns about:

- The 12-month publication period in which decisions remain published, which can discourage DCTs from republishing them and potentially limits their appeal to startup DCTs.
- Complexity in layering Ombudsman data over data from the legal regulators, and in ways that minimise duplication or errors between those datasets.
- Contextualisation of Ombudsman decisions for browsing consumers, and the challenge of explaining at-a-glance what they actually mean as a quality indicator.

Research with consumer groups within the pilot found that consumers need context in order to successfully use Ombudsman decisions as a quality indicator. There is interest in seeing numbers of complaints as a proportion of cases dealt with, and the nature of complaints being made. DCTs agreed that contextualisation is crucial, and integral to any successful republication of Ombudsman decisions.

The Legal Ombudsman will continue to work with the SRA, the LSB and others within the sector to understand how Ombudsman decision data can be best used to help inform prospective clients looking for indicators of quality of service delivered.

The research points out that voluntary arrangements around the publication of complaints data will not be effective and that it could require providers to start publishing or connecting with current published Ombudsman decisions from their websites. That way, decisions could become more visible and accessible through provider's own websites - something which the research showed to hold value with many consumers.

The Legal Ombudsman is considering transparency and insight as part of its future strategy and the question of 'what' is published is an important consideration.

Further information on the pilot can be found [here](#).

## 3. Announcements and appointments

### Lord Chief Justice

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HM Judiciary have confirmed that Dame Sue Carr will be the next lord chief justice of England and Wales. She will take up the post on 1 October following the retirement of The Rt Hon. the Lord Burnett of Maldon on 30 September.