

<i>Meeting</i>	OLC Board	<i>paper No.</i>	114.14
<i>Date of meeting</i>	17 May 2021	<i>Time required</i>	N/A Paper presented for information

<i>Title</i>	<b>Horizon Scanning – May 2021</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>
<p>The board are asked to note the contents of the Horizon Scan.</p> <p>The horizon scan notes key publications such as the LSB Strategy and LSCP Business Plan which outline the ambition and direction of travel expected for the sector. A common theme within these publications is the drive for greater transparency through increased access to data and for better access to redress in the unregulated sector. We responded to the LSB discussion paper around Quality Indicators on the 22 April which outlined our views on areas such as Digital Comparison Tools and greater access for consumers to data on quality of service, including complaints data. As an organisation we are already committed to looking at ways to increase transparency of data, including for 2021/22 establishing a business case for publishing full decisions and will continue to work with partners in the drive to increase transparency.</p> <p>Ongoing developments and progress in areas such as the whiplash reforms which come into force from the end of May and the increased demand from the Stamp Duty holiday are also covered in this paper and recognise where a there could be a possible impact on complaint volumes coming into the Ombudsman.</p>
<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.

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**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 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
LSB Strategy: Reshaping Legal Services	Medium	How and where complaints information is shared, complaint volumes and ability to access redress	1	↑
LSCP Business Plan	Medium	How and where complaints information is shared, complaint volumes and ability to access redress	1	↑
Impact of COVID-19	Medium	Complaint volumes	2	↑
Whiplash Reform Update	Medium	Complaint volumes	3	↓
Fast Track Land Registry	Low	Complaint volumes	3	↔

## Thematic issues and news

➤ *Medium impact*

### LSB Strategy: Reshaping Legal Services

On 29<sup>th</sup> March 2021, the LSB released their strategy 'Reshaping Legal Services', which outlines a 10-year strategic direction for the sector, alongside priority areas of focus for the next 3 years. The strategy has a particular focus on regulation. The strategy is split into three main strategic themes: fairer outcomes, stronger confidence, and better services, with the golden thread to these themes being the need to reshape legal services to better meet society's needs. A focus is the development of quality indicators, which were outlined in a discussion paper that the OLC responded to on 22<sup>nd</sup> April.

The strategy outlines the priority outcomes the LSB would expect to see if the changes are met, which include the ability for consumers to easily compare the cost and quality of different legal services providers and what services they deliver. There have been ongoing discussions as part of the quality indicator work around the use of Digital Comparison Tools (DCTs) and the LSB anticipate these would be the norm.

There are number of challenges outlined in the strategy which are for the Ombudsman to reflect on and prepare for, particularly around the focus on improving complaint handling, delivering universal redress, and enhancing transparency on quality and price. Regarding universal redress, the strategy is explicit in stating the ambition is for Legal Ombudsman to be the sole provider of universal redress for legal complaints, but this would require on significant progress being made in addressing the current backlog. Going forward, the LSB will potentially consider a statutory review of reserved legal activities and confirms they will work with government and OLC to expand access to redress.

Transparency of quality of service remains the area where least progress has been made since the CMAs review in 2016 and the LSB outlines the need for more and better open data.

➤ *Medium impact*

### LSCP Business Plan

In April, the Legal Services Consumer Panel (LSCP) published their business plan which aligns their strategic objectives with those of the LSB to help to ensure that regulation delivers fairer outcomes, stronger confidence, and better services for consumers.

The LSCP is fully supportive of the LSB's proposal to develop a register of unregulated providers with access to redress for those who use them. The report does highlight, however, that more research and analysis of the unregulated market and the consumers who use these services is required, in order to understand how they are faring.

Confidence in complaints handling is also outlined as a priority, with the LSCP outlining their concerns over the backlog but their support to the Ombudsman to continuing addressing it. Their research has shown that consumers lack the confidence to complain about poor services and there are significant gaps in redress. Although there is no regulatory commitment to explore the gaps in redress, it remains a key concern for the LSCP and they will continue to highlight this going forward.

As Transparency remains a key aim in the business plan and is a factor which is being focused on across all sectors. We will work with partners over the next financial year to ensure our commitment to improving transparency is part of the wider drive to improve data.

The business plan also outlines their work programme for 2021/22. Much of their work over the coming year will be in support of others' projects, in particular the projects detailed by the LSB. Areas of focus will include:

- Supporting the LSB in its drive to ensure the effective implementation of the outstanding CMA recommendations.
- Supporting the LSB's research and work programme more generally.
- Using their convening power to:
  - Promote a coordinated sector response to meet the issues exacerbated by Covid-19.
  - Propose a regulatory response to the problem of advice deserts.
- Encouraging regulators to develop and entrench a more consumer-focused approach to regulation.
- Reinforcing ongoing or planned work by publishing reports as appropriate, for example on:
  - Metrics for evaluating and monitoring regulatory policies.
  - Consumer segmentation and how regulators could use this approach more effectively in their work

➤ *Medium impact*

### **Impact of COVID-19**

The Office for National Statistics have published figures which show that the legal sector is generating more revenue now than before the first lockdown in March last year. Despite predictions around the detrimental impact Coronavirus would have on the legal sector, data shows that turnover rose to £3.13bn in February 2021 which is an 11.4% increase on February 2020.

This indicates that despite ongoing challenges to businesses, overall, the legal services sector is still healthy and making a good contribution to the UK economy. The report does not distinguish which parts of the legal sector are performing above pre-covid levels and only references the sector as a whole. Going forward it will be important to be mindful of any data that is released which breaks down which parts of the legal sector have increased turnover during the last 12 months, as an increase in business in some areas of law may have a longer-term impact on the number of complaints coming through to the Ombudsman.

➤ *Medium*

### **Whiplash Reform Programme Update**

At the end of April, the Government released a statement outlining their commitment to implementing 'necessary and proportionate measures' to control the number and cost of claims for whiplash as set out in Part 1 of the Civil Liability Act 2018. These reforms will come in from 31 May 2021.

The Government had also previously considered an increase, from £1000 to £2000, to the small claims track limit for all types of personal injury claims other than RTA personal injury claims, including employers and public liability claims. However, following representation from a wide range of stakeholders, including insurance firms, the government has decided to both limit the proposed increase in the small claims limit for all other personal injury claims to £1,500 instead of

£2,000 and to defer the implementation of this measure until April 2022. This decision has been made to allow greater focus to be placed on the commencement of the whiplash reforms and the launch of the new Official Injury Claim service for claimants on 31 May 2021.

As previously reported, at this stage it is likely that this will lead to a decrease in Personal Injury complaints, which is one of the Legal Ombudsman's top five complaint areas, because of the reduction in the value of claims.

➤ *Low*

## **Fast Track Land Registry**

HM Land Registry has issued a reminder to conveyancers that anyone involved in selling or buying property, including members of the public or their conveyancers, can ask HM Land Registry to expedite an outstanding application. This is to ensure that no property sales are put at risk.

With the extension of the Stamp Duty holiday until the end of June and a surge in the property sale market as a result, this may result in more conveyancers and members of the public applying to fast-track their application in order to meet the cut off date. We have previously reported on the SDLT and the likelihood of an increase in complaints following the end of the holiday period from those who fall outside the date. This may have an impact on the detail of complaints of consumers whose house sale is not completed by the end of June.

## **Research and reports**

### **LSB Striking the Balance**

In April, the LSB published a paper 'Striking the Balance' which outlined how legal services regulators can actively support technology and innovation that safely increase access to legal services. It encourages regulators to create an environment that 'de-risks' innovation and reduces uncertainty for tech providers and consumers.

The LSB makes it clear that regulation has an important role in removing perceived barriers to innovation, building consumer trust and confidence, and managing risks. It outlines how technology can help open the legal services market up to citizens and small businesses that are currently excluded. It states that it can also improve service quality by enabling providers to deliver services in ways that better meet people's needs.

The LSB notes that technology carries risks that need to be considered and managed if its full potential is to be realised. This includes ensuring that those with low digital capability and digital literacy are not excluded from accessing essential services. The paper identifies several steps that regulators should consider for increasing technology in the sector which include using technology to be accessible to the unregulated sector and for better use of technology in discharging regulatory functions.

The LSB will later set out how it intends to take the work forward and will facilitate joint working to work with organisations from across legal and technology communities.

## **Consultation responses and publications**

### **Quality indicators in the legal services market: discussion paper responses:**

On 22<sup>nd</sup> April, we submitted our response to the LSB's Quality Indicators discussion paper. In it we supported the idea of greater levels of data being made available but outlined our concerns around issues including contextualisation of data and the negative perception that surrounds complaints, despite what is said about the service after investigation. Overall, we supported the development of a Single Digital Register, as we believe this is the most likely to provide a mechanism for bringing together both the data and contextual information. It also ensures it is presented in a way which gives consumers the best chance of interpreting and using this data. However, we also stated that it will be important to work alongside and benefit from the experience of comparison sites as they have greater expertise and ability to be able to market this information to consumers.

Across the sector a range of responses have also been published to the discussion paper. The Law Society in its response strongly oppose mandatory engagement with review sites and instead suggests the LSB should be considering existing quality schemes, including revamping professional websites, including better use of the Legal Choices website. Their response highlights a concern that the proposals around Digital Comparison Tools will have a disproportionate impact on sole practitioners, small firms and BAME solicitors.

The Council for Licensed Conveyancers outlined their support for a more proportionate response to quality indicators and consumer information but voiced concerns over the danger consumer websites posed to service providers due to often one-sided reviews. Similarly, the Bar Council voiced their concerns around the risk of malicious feedback being left and the need for platforms to have a method of dealing with that risk. The Bar Council added that whilst they agree in principle that quality indicators have the potential to serve as a factor in consumers making informed decisions, they will have very little value in relation to Barristers.

The Bar Standards Board outlined its commitment to increasing transparency for consumers to provide them with information and iterated its commitment to collaborating with other legal regulators to understand the possible benefits of quality indicators and pilot new approaches. They too outlined concerns around the use of consumer feedback, stating that clients may be swayed in leaving positive or negative feedback by the outcome of their case. They also added that compared to other sectors, it may be more difficult for a client to assess the quality of the service they have received.

Issues around contextualisation of data are highlighted within all of these responses and will undoubtedly be the key challenge in ensuring that consumers are able to use the data being made available in order to make an informed decision.