




**Horizon Scan- October 2023**

<b>Meeting</b>	OLC Board	<b>Agenda Item No.</b>	N/A
		<b>Paper No.</b>	129.11
<b>Date of meeting</b>	October 2023	<b>Time required</b>	N/A
<b>Title</b>	<b>Horizon Scan- October 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.			
<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>		
<i>Insert details</i>	N/A		

# Horizon Scan- October 2023

## 1. Overview

Issue	Impact	This will affect...	Likelihood (1-5)	Demand
Fixed recoverable costs reform	Medium	Complaint volumes- particularly in relation to costs	2	
Whiplash portal-update	Low	Complaint volumes	4	
Gross Legal Product Index	Low	Complaint types and volumes	4	

## 2. Thematic Issues and news

### **Fixed recoverable costs reform- go live and extension to clinical negligence.**

Changes to fixed recoverable costs (FRC) went live as planned on 1 October 2023. The regime was extended across the fast track and in a new intermediate track, which means the vast number of cases valued between £25,000 and £100,000 will now be captured by fixed recoverable costs.

Since the last horizon scan paper, the Government has also announced that fixed costs will be imposed on clinical negligence claims worth up to £25,000 from April 2024. As part of this extension, the Government has also confirmed that if the claim is overvalued at the outset and subsequently settles for less than £25,000, then it will still be subject to fixed costs.

There are concerns within the sector that the extension of the regime to clinical negligence claims will mean smaller businesses will not risk taking on these claims given the risk of not being able to recover sufficient costs- particularly given the clarification that fixed costs will apply to those which settle below £25,000. This has also been identified by the Government in its impact assessment of the new policy. This could have implications from both an access to justice perspective and on the ability of the service providers to provide accurate costs information up front to clients.

Linked to this is the possibility that there is an increase in the number of costs complaints that are brought to the Legal Ombudsman. There are several firms whose business model is largely based on pursuing claims against service providers on behalf of their former clients. This is not a new risk, with examples already live on firms involved in bringing costs related complaints to the Legal

## Horizon Scan- October 2023

Ombudsman following the Belsner v CAM Legal Services ruling by Sir Geoffrey Vos in October 2022.

Whilst the impact of the fixed recoverable costs reform on client disputes is currently unknown, the Legal Ombudsman will continue to monitor the impact on demand and the number of costs complaints being referred as a result of firms not adequately informing their clients of the fees chargeable.

### **Whiplash portal- update**

There is a currently a significant focus on the failings of the Official Injury Claim (OIC) portal, also known as the whiplash portal, which was brought in to take excessive costs and delays out of the claims process. The portal came into effect from May 2021 with the intention being to save costs and allow some claimants to pursue their claims without the need for legal representation. However latest figures have shown that the portal is not working as intended and there is now a considerable backlog of unresolved claims in the system.

In September, the Justice Committee (which examines the policies and spending of the Ministry of Justice) highlighted in its report that there are 349,000 unresolved cases in the system, with an average time to settle a case sitting at 251 days. This is up from 212,000 in May 2022. Despite the portal having been designed for claimants to use without the need for legal representation, of the total number of claims submitted via the portal since its inception, only 10% of claims were brought by unrepresented claimants, whilst the other 90% of claimants had legal representation.

The Committee is calling on the MoJ to look at the technological problems which are preventing users from operating the portal as intended and are therefore affecting the 'efficiency, accuracy or timeliness' of cases being resolved.

The Association of Personal Injury Lawyers has also publicly commented, supporting the view that unrepresented claimants are continuing to face problems trying to use the portal. Its analysis found that between the portal's launch and the end of 2022, unrepresented claimants made 24,478 calls for support. During that time 38,438 claims were made by unrepresented claimants, which means that for every 10 unrepresented claimants, more than six calls are being made for help.

As above with the fixed recoverable costs regime, the delays and complications with the OIC portal is being seen as a significant risk to service providers choosing to not take on this work given the time involved to use the system and the amount of money that can be recovered. From discussions we have had with members of the profession, there is evidence that some firms are already seeing complaints about delays and the overall value of the claim. Where service providers are not appropriately managing client expectations, and cannot resolve the complaint are first tier, it may therefore result in more complaints being referred to the Legal Ombudsman.

### **Gross Legal product index**

In relation to market growth within the legal sector, the latest 'Gross Legal Product Index' from LexisNexis Legal & Professional has predicted that the sector will grow by 2% in 2024, which is down from the 6% growth in 2023. This

predicted slowdown follows a substantial increase in the demand for services in the two years post-pandemic. The demand grew by 22% in 2021.

However, despite the slowdown, there are considerable differences in growth when looking at specific areas of the law. Of note to the Legal Ombudsman, the Index predicts strong growth across property (7%) and immigration (7%). Both property and immigration law rebounded in the previous GLP Index after several years of decline.

When looking at incoming demand, conveyancing accounts for the highest proportion of complaints referred to the Legal Ombudsman. Growth within property may be reflective of spikes in demand caused by factors such as stamp duty holidays and interest rates which have either been low enough to drive conveyancing demand from increased property purchases, or conveyancing demand related to remortgaging the substantial interest rate increases in the last twelve months. The insight from understanding demand will help target appropriate learning and insight around expectations related to the service provided and the adequacy of a provider's first tier complaints handling.

### 3. Consultation responses and publications

#### LSB consultation on first tier complaints

The Legal Services Board has [launched a consultation](#) on proposals to ensure that users of legal services have access to 'fair and effective complaint procedures'. The LSB states that the proposals aim to strengthen consumer protection and improve the quality and standards of legal services.

The consultation is focused on 'first-tier complaints' with the draft new policy statement outlining outcomes for regulators to deliver, including collecting and analysing intelligence on complaints to improve the culture of learning and continuous improvement within the sector and raise standards.

The consultation follows research the LSB conducted on exploring the challenges consumers face when complaining about legal services, as well as a range of evidence that first-tier complaints handling is not meeting consumers' expectations as well as it should.

As part of the consultation, the draft policy statement and supporting S112 Requirements refers to regulators using the Legal Ombudsman's data and intelligence to identify trends and themes in the complaints made about their regulated communities to ensure action is taken to address recurring issues and trends. This work is very much in line with the Legal Ombudsman's vision for its future and will be submitting a full written consultation response which outlines support for the initiative. However, the response will also look to ensure that its role, insight, and unique experience as the complaint handling body for the legal services sector is properly recognised within the LSB's final policy statement and regulatory requirements.

#### SRA and CILEX

The SRA is currently consulting on the future regulation of authorised members of the Chartered Institute of Legal Executives (CILEX). This follows a CILEX

## Horizon Scan- October 2023

consultation which launched in August 2023 which outlined proposals to re-delegate the regulation of its members to the SRA

This is part of ongoing discussions that have been taking place since 2022. The SRA's Board has now taken the view that taking on the regulation of authorised CILEX members has potential to deliver tangible benefits to consumers of legal services and the wider public. They suggest that the proposed change would simplify the complex regulatory landscape, making it easier for consumers to navigate.

The consultation sets out its proposed approach to the regulation of authorised CILEX members. This includes maintaining distinct identities for authorised CILEX lawyers and solicitors, with a separate Code of Conduct for CILEX lawyers. A distinct CILEX route to authorisation would also be retained, and the consultation also highlights how the SRA would handle investigations and enforcement activity for Legal Executives.

The costs of regulating authorised CILEX lawyers would be fully recovered from the practising certificate fees of CILEX members, with no cross subsidy between solicitors and CILEX lawyers.

The Legal Ombudsman is not planning to respond to this consultation but will continue to monitor developments to ensure that its operational processes and protocols, including Memorandums of Understanding with both organisations are fully reflective of any future changes to regulation.