

Meeting	OLC Board	Agenda Item No.	Presented for Information
Date of meeting	18 October 2021		

Title	Horizon Scanning – October 2021
Sponsor	Steve Pearson – Deputy Ombudsman
Status	OFFICIAL
To be communicated to:	Members and those in attendance

Executive summary
<p>The Board are asked to note the contents of the Horizon Scan.</p> <p>The horizon scan notes two government publications around dispute resolution. One is a Department for Business, Energy and Industrial Strategy consultations on consumer policy and the other is and Ministry of Justice call for evidence on dispute resolution and how it can be improved to avoid going into the judicial system. The horizon scan also outlines the LSB’s latest publication on their quality indicators work; the draft statement of policy. The draft statement outlines how regulators are expected to ensure that information is made available to consumers, to improve transparency in the market and better support consumer confidence in the legal services sector.</p> <p>Information is also presented on the CLC’s decision to move to a ‘polluter pays’ model for the OLC levy. Only those firms who have complaints made against them will be liable for the proportion of the charge. The application has not yet been approved by the LSB.</p> <p>The paper also outlines changes to compensation fund arrangements for two of the smaller regulators; CILEx Regulation and IPReg. Both have consulted on having their own funds.</p>
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 – October 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
CLC proposals on OLC Levy	Medium	Regulatory charges and potential complaint volumes.	5	↔
LSB Draft Policy Statement	Medium	Transparency of information available to consumers	3	↔
MoJ Call for Evidence	Medium	Numbers of disputes being taken into the justice system	3	↔
BEIS Consultation on Consumer Policy	Low	ADR processes, quality and oversight and time limits for first tier complaints.	4	↑
Compensation Funds- CILEx and IPReg	Low	Access to redress	1	↔

Thematic issues and news

CLC proposals on OLC Levy

➤ *Medium impact*

The Council for Licensed Conveyancers have submitted proposals to the LSB that would mean conveyancers who incur the most complaints will pay a bigger share of the OLC levy. The CLC wants to strip out the cost of the complaints service from practice fees and recharge firms based on their complaint numbers. The CLC will be the first regulator to move to this model if proposals are approved by the LSB.

The application seeks a rule change which splits the 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 proposals suggest moving to this model will reduce practice fees by an average of 23% across all its firms, but those firms with a disproportionate number of complaints will see costs rise. The CLC believe that placing more of the cost of the levy on those who generate the most complaints will encourage those firms to address service issues and improve their complaints-handling procedures.

LeO has previously responded to the CLC consultation on the levy proposals and suggested that the fee should be calculated against the number of upheld complaints, rather than all complaints that are investigated.

MOJ: Call for Evidence

The Ministry of Justice has put out a call for evidence which looks at understanding where changes can be made to help prevent disputes being taken to court. In the light of COVID-19 and its impact on the court systems, the MoJ is looking at diverting disputes from the judicial system and includes pre-hearings as part of its remit. The introduction to the call for evidence outlines that:

- over 2 million civil proceedings were started in the County Courts in 2019, the majority of which were undefended “default” judgements allowing creditors to apply for enforcement.
- Nearly 300,000 claims were defended and the majority of those were settled or withdrawn before the hearing stage (just under 65,000 claims went to trial in 2019).

The level of attrition seen through the number of cases being settled or withdrawn before the hearing stage is evidence that alternatives to court are possible. Evidence from surveying civil court users showed that the majority of respondents would have preferred to avoid court and see court proceedings as a last resort (68% overall: 57% for damages claimants but rising to 80% and 81% among money and possession claimants respectively). The aim of the call for evidence is to therefore enable the MoJ to more effectively and efficiently support parties to use the best processes to achieve high quality, timely, cost effective, proportionate, and enforceable resolution to their disputes.

We will be following the outcomes of the call for evidence to understand the evidence collected and whether any future proposals, linked to the call for evidence, are likely to have an affect or impact on statutory ombudsman schemes.

LSB Draft Statement of Policy on empowering consumers:

➤ *medium impact*

On the 15 September, the LSB have launched a [consultation on a draft statement of policy](#), which sets expectations of how regulators should support consumers to better understand and engage with the legal services market.

The draft statement has been developed following engagement with the legal services regulators and others across the sector. It outlines how the regulators should ensure that people and small businesses who need legal advice have the information they need to shop around and exercise choice.

The quality indicators work continues to look at setting expectations around ensuring legal services providers offer helpful information to consumers about the cost and quality of their services and on redress and regulation. The Legal Ombudsman has previously responded to the discussion paper outlining support for complains data to be used as part of the suite of quality indicators.

As part of the consultation on the draft statement of policy, the LSB have set out proposals around the expectation on regulators to:

- ensure provision of information on price, quality, service, redress and regulation;
- enable consumers to engage effectively with the legal services market; and
- secure effective compliance with regulatory arrangements implemented to achieve the specified outcomes

The consultation also outlines that it will expect regulators to clamp down on firms not doing enough to give client information to the regulator, as per their need. The consultation is running until 8th December, and we will be preparing a response.

Compensation Funds- CILEx and IPReg

➤ *Low impact*

CILEx Regulation and IPReg have both recently consulted on changes to their compensation arrangements following Royal Sun Alliance's decision to pull out of the market.

The funds pay discretionary grants to people who have suffered financial loss because of a lawyer's dishonesty or failure to account for client money where not covered by indemnity insurance – which is usually when there is not an innocent partner at the firm.

CILEx Regulation is proposing to keep the maximum individual discretionary grant at £500,000 to maintain the current maximum for an individual claim and therefore providing continuity for the consumer.

Although a claim has never been made against the current policy, IPReg is also planning to establish a compensation fund and have obtained actuarial advice on the appropriate size of that fund and the limits that should be applied to grants made from it based on an interim risk model. The proposals suggest an individual limit of £22,500 per claimant and a firm limit of £100,000 per firm.

Consultation responses and publications

BEIS consultation: 'Reforming Competition and Consumer Policy'

➤ *Medium impact*

The Department for Business, Energy & Industrial Strategy published their '[Reforming Competition and Consumer Policy](#)' consultation which ran until 1st October. Covering numerous aspects of competition and consumer law and reflecting on the dramatic shift to digital platforms which have been particularly exacerbated by the covid-19 pandemic, the consultation looks at how consumers can be better protected and have better access to redress. A main focus within the consumer policy section is access to redress and the quality and oversight of ADR providers.

The OLC submitted their response on 1st October and focused on three key areas that could potentially affect how the Legal Ombudsman operates or are relevant to the wider work we are involved in, such as transparency of information. The three areas are: fake reviews, access to ADR, and the quality and oversight of ADR services.

The consultation included proposals around reducing the upper time limit for first-tier complaints to be resolved from eight weeks to four weeks. As part of the response, we highlighted our view that whilst some complaints could or should be dealt with within four weeks, there needs to be a recognition that high complexity complaints that may take longer than four weeks to resolve.

Appointments

Law Society Chief Executive announces departure:

The Law Society's Chief Executive has resigned after nearly five years in the role. Paul Tennant will take up a new role as Chief Executive of national charity the Abbeyfield Society. The Law Society is in the process of appointing a successor.

Changes to MoJ

Dominic Raab MP has been appointed as the justice secretary following the dismissal of Robert Buckland MP QC.