

Meeting	OLC Board	Paper No: 111.13 Issued for Information
Date of meeting	28 January 2021	

Title	<b>Horizon Scanning – January 2021</b>
Sponsor	Steve Pearson – Deputy Ombudsman
Status	OFFICIAL
To be communicated to:	Members and those in attendance

<b>Executive summary</b>
The board are asked to note the contents of the Horizon Scan. In particular the report highlights the LSB report on the legal sector and the outcomes of the CMA review.
<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 – January 2020

### Overview

*Likelihood score refers to how probable it is that this impact will hit us (at the level identified). Demand is effect on complaint volumes.*

Issue	Impact	This will affect...	Likelihood (1-5)	Demand
Impact of COVID-19	Medium	Complaint volumes and mix of complaints	3	uncertain
SRA clampdown on lack of compliance	Low	Sector compliance with transparency rules and possibly knowledge of LeO	3	↑
LSB State of the Legal Services Sector	Medium	Stakeholders priorities for the sector	2	n/a
Competition and Markets Authority sector review	High	Requirements for transparency and discussions about redress	2	uncertain
Bar Council report: Running on Empty	Low	Discussed state of the civil legal aid system. Possible impact on complaint levels.	3	↑

## Thematic issues and news

### ➤ *Medium impact*

#### Impact of Covid-19

A recent Bar Council survey from December 2020 highlights a number of areas which show the continuing impact of the pandemic on the Bar. The survey reported that 84% of the publicly funded bar were still billing lower fee income than pre-covid, with 43% saying it is down by over half, 20% are unsure if they will renew their practising certificate. In addition 83% of the criminal Bar said they had incurred personal debt to support their practice.

Further information has been circulating in recent weeks about the backlog of cases in the courts system which some consider is leading to a significant threat to the operation of the criminal justice system. The MoJ have received additional funding in the recent spending review to bolster the system.

Whilst criminal and publicly funded areas of law are some of the lower areas of complaints delays within the system could have an impact on complaints levels.

### ➤ *Low impact*

#### SRA clampdown on lack of compliance with transparency measures

It was recently published that four firms received sanctions for failure to publish mandatory details about costs and complaints details on the website.

Publication of this could encourage compliance with the rules, and there is potential for it to impact complaints about costs in particular.

## Research and reports

**State of Legal Services:** In November the LSB published the State of the Legal Services Report. The outcomes from the report form the basis of the LSB strategy for the sector and the business plan which follows on from this. The OLC draft response to the LSB business plan has been circulated for comment.

The report highlights a number of key findings:

- *Need for legal services:* 6/10 adults experienced a legal issue in last 4 years, 1.8mn small businesses.
- *Achievements:* 84% customers are satisfied with the service they receive / 1,400 ABS in market / Legal Choices website is platform for consumer education and has exceeded visitor targets.
- *Challenges:* 50% small businesses handle legal issues alone / 36% adults have low confidence they can achieve a fair outcome / 3.6mn adults in E&W have an unmet legal need involving a dispute every year.
- *Purchasing services:* 30% consumers shop around / 2% consumers use a comparison service / 54% consumers say they find it easy to compare quality / in small businesses only 1 in 10 view lawyers as cost effective.

- *Diversity of profession:* 9% QCs from BAME backgrounds (15% practising barristers) / 20% pay gap across legal professionals / 77% legal exec are women / 37% barristers went to fee paying schools.
- *Regulation:* Recent years has seen the removal of barriers to entry and unnecessary regulation. Though controversial they is not yet evidence of adverse consumer outcomes. / Government backing for creation of sandboxes to support innovation in the sector.

The report sets out several themes for future work:

*Fairer outcomes:*

Tackling unfairness that harms the public and the profession

- 1 – Lowering unmet legal need prevalent across large parts of society
- 2 – Achieving fairer outcomes for people experiencing greater disadvantage
- 3 – Dismantling barriers to a diverse and inclusive profession at all level

*Stronger confidence:*

Building public and professional confidence on strong foundations

- Ensuring high quality legal services and strong professional ethics
- Closing gaps in consumer protection
- Reforming the justice system and redrawing the regulatory landscape

*Better services:*

Enabling consumers to spur responsible innovation

- Empowering consumers to obtain high quality and affordable services
- Fostering innovation that designs services around consumer needs
- Supporting responsible use of technology that commands public trust

➤ **Medium Impact**

The report sets out a range of challenges for the sector and it is possible that other stakeholders in the legal sector will begin to use these as a wider framework for their own programmes of work.

There are a range of areas of work where the Legal Ombudsman should engage with the LSB: transparency, vulnerable consumers and unauthorised providers.

## **Competition and Markets Authority**

In the second half of 2020 the CMA undertook a three month review to understand the extent to which its recommendations from the 2016 Legal Services market study had been taken forward. The review looked at two main areas: transparency (measures which can enable consumers to make informed choices about their legal purchase and drive competition in the market) and regulatory framework (the extent to which the framework is fit for purpose).

**Transparency:** The report concludes that the regulators have made significant strides introducing transparency requirements to enable consumers to make informed choices about their legal purchases. However more action will be required over the coming years to ensure that the range of information available (clear understanding of quality indicators for the legal

sector) and the channels for consumers to access and use this information are available (Legal Choices, and digital comparison tools).

Unauthorised sector: The CMA still consider that wholesale reform of the Legal Services Act is required in order to respond to regulatory gaps. However in the short-term consider that the MoJ should look at resolving the question of the unauthorised sector through the creation of a single register, which would then provide a mechanism for redress. They note that the Legal Ombudsman could potentially provide redress, however also note that performance challenges and unit costs / business model may not yet be appropriate for the unauthorised sector.

The CMA also consider that the LSB should review the list of reserved activities.

#### ➤ High Impact

The report places a renewed focus on both the transparency agenda and the need to address the position of the unauthorised sector. The Legal Ombudsman will need to engage with both these areas of work.

### **Running on Empty**

A recent Bar Council report has looked at the state of the civil legal aid system through interviews with barristers and clerks. The report concludes that:

- An inequality of representation is taking place, with one party being represented by a junior barrister who has not had the time to get to know the case, parties, and they will be facing more senior practitioners representing the state.
- Closure of advice centres and high streets and pressure on the remaining ones have seriously impacted the Bar.
- Barristers have to compensate for low fee income by working longer hours.
- Career unsustainability for the junior Bar, and especially those without independent finances.

#### ➤ Low Impact

There is the potential that the inequality within the system could lead to more perceptions of injustice and therefore an increase in complaints.

## **Upcoming consultations and publications**

**LSB Policy statement on quality indicators** The LSB have indicated that they are likely to consult on a policy statement in the Spring. This will begin to look at criteria for quality indicators for the sector that will support consumer choice.