

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	10 100.8
<i>Date of meeting</i>	28 November 2019	<i>Time required</i>	10 Minutes

<i>Title</i>	Horizon Scanning – November 2019
<i>Sponsor</i>	Sarah Ritzenthaler, Parliamentary and Policy Advisor
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

Executive summary
<p>This report covers developments in our external operating environment over October and November 2019. The major issue that has arisen is the publication of the final report of the Commission on Justice in Wales, which could have far-reaching consequences for the future of our justice system. Research dominates much of the rest of this horizon scan, with surveys reflecting people’s experience of the legal services market from a number of different angles, from which we can draw learning. Alongside this, issues relating to access to justice appear to be at the forefront of regulatory decision-making, as well as continuing focus on reputation and standards in the legal profession.</p> <p>There is a great deal of room for the Legal Ombudsman (LeO) to contribute to these discussions, and to take advantage of opportunities to hone our own service.</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 – November 2019

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
Commission on Justice in Wales recommends separate Welsh justice system	High	Our engagement with stakeholders in Wales; tailoring of our service	3	➡
Money Saving expert releases report on eight-week first-tier complaint rule	Medium	Our business process and our jurisdiction	3	➡
New SRA Corporate Strategy makes specific commitment to access to justice	Medium	Regulatory environment, potential for joint projects	4	n/a
Research finds that most new legal business is generated through reputation and trust	Medium	Designing guidance; information we might publish	3	⬇
Lord Chancellor announces that plans to increase probate fees have been abandoned	Medium	Forecasting – no longer expecting increase in demand	5	➡
LSB launches report on largest ever legal needs survey in England and Wales	Low	Our consumer information and areas of policy interest	2	n/a
BSB under scrutiny for separate approach to provision of consumer information	Low	Regulatory environment, understanding of barristers' services	1	⬆
Debate continues around introduction and design of the Solicitors Qualifying Exam	Low	Professional service standards	3	⬆
Transparency, accessibility and the role of technology	Low	Understanding of how to improve access and client experience	4	⬇

Details

➤ *High impact*

Commission on Justice in Wales recommends separate Welsh justice system

The Commission on Justice in Wales released its [final report](#) in October 2019, following almost two years of work investigating the most appropriate justice arrangements for Wales in light of the new devolution settlement set out in the Wales Act 2017. The recommendations include “substantial devolution” of justice functions from Whitehall to Cardiff in order to “reinvigorate the rural and post-industrial legal sector” in Wales. This would mean a new justice department in the Welsh government, a Welsh High Court and Court of Appeal, and a distinct body of Welsh law.

Other measures recommended by the report include creating a separate criminal legal aid system, changing the age of criminal responsibility, focusing on crime reduction especially where drug abuse and mental health issues are risk factors, and making all justice bodies subject to the 2011 Welsh Language Measure. Interestingly, there is also a suggestion that Wales should consider the feasibility of a low-cost ombudsman scheme to resolve civil disputes.

The commission decided not to recommend devolution of representation and regulation of the legal professions, on the basis of the extra cost burden for providers in Wales. This means that the jurisdiction of the Legal Ombudsman is unlikely to change. However, the suggestion by Lord Thomas of Cwmgiedd, Chair of the Commission, that regulators should be directly accountable to the (new) Welsh Parliament could have impacts on the current structure of regulation in England & Wales as a whole.

While the Ministry of Justice (MoJ) has dismissed the idea of creating a separate jurisdiction, it has committed to reviewing the findings of the report. Meanwhile, the Welsh First Minister has [indicated his support](#) for reform in line with the recommendations of the report, stating his intention to establish a new justice committee of the Cabinet which he himself will chair. The Welsh government more broadly has pledged to bring forward a debate on the report in the new year and take action quickly.

➤ *Medium impact*

Money Saving expert releases report on eight-week first-tier complaint rule

Following on from their previous publication *Sharper Teeth: the consumer need for ombudsman reform*, Money Saving Expert (MSE) has released a [new report](#) on reducing the ombudsman sector standard eight-week timeframe for first-tier complaints handling to take place. This was one of the recommendations made in the earlier report, and according to MSE’s own survey conducted by YouGov, 89% of people believe that they should have to wait four weeks or less to refer a case to an ombudsman scheme, with 50% saying it should be no more than two weeks.

The report suggests that making this change would reduce consumer frustration and incentivise firms to take fast and effective action. It also indicates that the current eight-week wait can have negative financial implications for consumers that would largely be addressed by reducing the timeframe. MSE says that this will put consumers ‘at the heart of the process’ and calls on the Department for Business, Energy and Industrial Strategy (BEIS) to include this matter in its forthcoming Consumer White Paper.

So far, the report has attracted very little media or political attention, although it was the feature of an article in the Observer around two weeks after its release. Major players in the ombudsman sector including Caroline Wayman and Matthew Vickers have shown support for changing the existing rules; it will be important for LeO to consider its position on the issue with regard to the demands of the legal services market.

New SRA Corporate Strategy make specific commitment to access to justice

The Solicitors Regulation Authority (SRA) has published a [consultation on its strategy for 2020-23](#). This outlines three strategic objectives relating to setting and maintaining high standards, technology and innovation, and responding to change. The SRA also makes a specific, ongoing commitment to promoting access to justice across its work in all of these areas. It links this to its current Legal Access Challenge project, which apportions funding to businesses that can develop technological solutions to help people access legal services when they need them.

This strategy has been released in the run-up to the new Standards and Regulations (StaRs) being launched on 25 November, which is the main output of the SRA's Looking to the Future Handbook review project which has been ongoing for some three years. Articles on adapting to the new rules have been appearing in the trade press of late, and the Law Society has voiced an interest in any guidance LeO can offer on how it will look at service under the StaRs.

There has also been some challenge from service providers over the new SRA digital badge. All firms will have to display on their websites from 25 November, although one particular provider has been speaking out against the use of Google Analytics in relation to the badge and concerns around GDPR. The SRA has sought to reassure providers that no identifying data about people who click on the badge is stored, but some firms are still voicing concern.

Research finds that most new business is generated through reputation and trust

The biggest-ever client experience [research project](#) conducted in the legal sector has found that reputation and trust are more important to clients than price when it comes to choosing a law firm. Using close to 70,000 satisfaction surveys and 5,000 anonymous experience reviews over the past six years, not-for-profit network LawNet has found that only 4% of new business is won on price, compared to 66% on client retention, recommendations, and good reputation.

Many of the findings would be unsurprising to staff at LeO: the results highlight the importance of keeping clients updated and explaining pricing structures clearly. However there is clearly still disconnect between service providers and their clients, with SRA research showing that 95% of lawyers believe they explain their charging system clearly, but only 70% of clients agree. This is useful for building our evidence base when feeding back to the profession about the issues we see, particularly in relation to costs information, as it reflects the experience of many of our complainants.

Lord Chancellor announces that plans to increase probate fees have been abandoned

Following delays and a steady stream of concerns and criticism, recently appointed Lord Chancellor and Secretary of State for Justice Robert Buckland announced that proposals to increase probate fees will no longer be pursued. The new legislation would have changed from a fixed fee of £215 (or £155 for those who use a solicitor) to a graduated fee structure for all those above a new, higher threshold of £50,000 – up to a maximum of £6000 (depending on the size of the estate). However, it was decided that the planned increase was not, in the end, 'fair and proportionate'.

The move follows vocal opposition from many (former) MPs, members of the House of Lords, the charity sector and other third sector organisations. It was originally justified as a source of funding for the courts system, bringing in around £185m for this purpose. As this will no longer be the case, a wider review of court fees will now take place with the emphasis on finding a fair, sustainable alternative for the future.

➤ *Low impact*

LSB and Law Society launch report on largest ever legal needs survey in England & Wales

At a special meeting of the All-Party Parliamentary Group on Public Legal Education and Pro Bono in the House of Commons on 29 October, the Legal Services Board (LSB) and the Law Society launched a report which looked at the accessibility of legal services to ordinary people. The main finding was that legal confidence is a major factor in the outcome of legal matters – that the less confident you are that you could achieve an outcome that is fair, the worse the outcome you achieve is likely to be.

Those who have low legal confidence tend not to understand so well how the system works, how to access help, and what kind of services they need. Around 36% of people surveyed were identified as falling into this category, and these made up just under half of all people who didn't seek professional help with their legal issue. Many reported struggling to search for services, prices and reviews, and 56% did not check whether the provider they were looking at was regulated.

Many of the results are unsurprising in light of previous findings and anecdotal knowledge from those working in the legal services market. The size of the sample was aimed at providing a solid evidence base from which action could be taken – and it was broadly agreed that this needs to be coordinated action involving regulators, representative bodies, charities and (perhaps most crucially) central government.

BSB under scrutiny for separate approach to provision of consumer information

Both the LSB and the Competition and Markets Authority (CMA) have indicated concern over the decision of the Bar Standards Board (BSB) to stop funding consumer information website Legal Choices. The CMA “strongly encouraged” the BSB to reconsider its decision, indicating that this could impact on the CMA's planned review of the progress made in implementing its recommendations from the 2016 market study.

The LSB has also expressed concern over the BSB's position in relation to Legal Choices, maintaining that it is too early to judge the success of the platform and that Legal Choices needs the support of regulators to make sure it is fulfilling its potential. The LSB has indicated that the BSB would need to invest significantly in alternatives to help promote access to justice. The BSB maintains that the redesign of their website and forthcoming action plan will be a better investment for them in improving the public's access to barristers' services.

LeO remains on the steering group for Legal Choices and contributes content but no funding.

Debate continues around introduction and design of the Solicitors Qualifying Exam

As the SRA's innovation agenda continues to progress, there is still significant disquiet amongst service providers, legal academics and lawmakers about the Solicitors Qualifying Exam (SQE)

which is due to be launched in September 2021. Recent articles in the trade press have highlighted challenges from the Junior Lawyers Division of the Law Society, which says that the proposed exam will “dilute the standard” of qualification and harm reputation of the legal profession. There have also been concerns voiced about the SRA’s decision not to offer the exam paper in Welsh on the basis that this would be too costly.

The LSB has also made it clear in recent weeks that approval of the SQE is not a foregone conclusion, and they will be expecting robust evidence in support of the SRA’s further application, expected in Summer 2020. It has indicated the ‘number and range of substantive issues that were raised during the first application’ and the general ‘strength of feeling’ around the SQE makes clear, robust supporting information all the more important.

At the moment, it is unclear how the introduction of the SQE might impact on service standards in the profession, but with our renewed interest in ‘upstream’ prevention, this is an issue in which LeO should take keen interest.

Transparency, technology and accessibility

Amidst the wider agenda for greater transparency in the legal services market, the LSB is proposing to begin holding at least one Board meeting each year in public. Although it notes the potential for this to limit freedom of debate, ultimately this is seen as a good move for the LSB’s profile, as well as for its stakeholders’ understanding and insight into its decisions. The LSB notes that it could be important to be leaders in this respect, acting as an example of best practice for the sector.

The LSB is also working on its projects to improve access to legal services through increased use of technology. In a [recent podcast](#), it encouraged service providers to begin using ‘blockchain’ technology which creates a clear chain of transactions and could cut the cost of legal services, helping many more people to access the help they need. The LSB highlights that currently, only 2% of legal service providers are using blockchain. Many are losing out on the benefits of increased transparency and speedier transactions which can help to build much greater trust and satisfaction between people and their service providers.

Meanwhile, new research suggests that solicitors and law firms also need to do more to ensure disabled consumers can access legal services. [Research conducted by the SRA](#) found over half of disabled consumers surveyed believe accessing professional services is overly difficult, with 31% suggesting that legal services in particular are complex to navigate. The top three barriers identified were unhelpful or inexperienced staff, unclear communication using complex jargon or irrelevant information, and not providing alternative communication methods. ‘Legalese’ made the process difficult to navigate for 38% of respondents. It is clearly important for LeO to take account of these concerns, in order to ensure we too are providing an accessible service.

Appointments, departures and awards

Mark Neale appointed as next Director-General of the Bar Standards Board *commencing February 2020. Mark was Chief Executive of the Financial Services Compensation Scheme for nine years until May 2019, and before that he was a senior civil servant at the Home Office (2002-2005) and HM Treasury (2005-2010). He replaces Dr Vanessa Davies, who is taking retirement at the end of this year.*