

<i>Meeting</i>	OLC Board	<i>Agenda Item. Paper No.</i>	13 92.14
<i>Date of meeting</i>	10 December 2018	<i>Time required</i>	15 Minutes

<i>Title</i>	<b>Horizon Scanning – December 2018</b>
<i>Sponsor</i>	Rob Powell – Chief Executive Officer
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

<b>Executive summary</b>
December's horizon scan highlights in particular the ongoing trend of changes in legal regulation, both in this jurisdiction and in Scotland, as well as the far-reaching impact of Brexit developments. We continue to see issues of justice cropping up in the news (including leasehold reform and the LASPO review), and a continuing focus on bodies in the financial services profession (FCA, FOS). There is also evidence of more attention on ombudsman schemes in general, including the launch of the new Rail Ombudsman.
<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 – December 2018

### 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...	Timeframe	Likelihood (1-5)	Demand
LSB approves SRA Handbook changes	High	Our ability to investigate and enforce remedies	Apr 2019	5	➡
Transparency agenda gathers pace	High	Number of cost-related complaints referred to LeO, and contacts at front end	Dec 2018 / Jan 2019	5	⬆
Scottish review of legal regulation publishes final report	Medium	Perception of similar issues in England & Wales	Oct 2018	3	➡
Changes in levels of complaints about mis-sold PPI	Medium	Number of complaints about CMCs making PPI claims	Aug 2019	2	⬇
BREXIT: public services and the future of the legal profession	Medium	Delivery of our service, trust and confidence in UK legal services	Mar 2019	4	⬇
Developments at the Ministry of Justice and NAO departmental overview	Medium	Perception of MoJ, public experience of legal processes	Oct/Nov 2018	1	➡
Treasury Select Committee comment on two-stage FOS casework review	Medium	Perception and scrutiny of ombudsman schemes	Jan 2019	3	n/a
Counsel General for Wales argues for devolution of policing and justice	Low	Extent of our jurisdiction	Ongoing	5	⬇
Solicitor-General launches legal education scheme for schools	Low	Knowledge of rights and access to justice	2028	2	⬆
Final LSB consultation on internal governance rules (IGR) published	Low	Stakeholder relationships and policy development	Jan 2019	4	n/a
Legal Aid sector responds to LASPO review	Low	Access to justice	2018/19	1	⬆

## Details

### ➤ *High impact*

#### **LSB approves SRA Handbook changes**

On 6 November, the Legal Services Board (LSB) announced their much-anticipated [decision](#) regarding the application of the Solicitors Regulation Authority (SRA) to overhaul their Handbook. The LSB approved the submission, which includes making a number of significant changes to regulations governing where and how a solicitor must practise. The main headline change will allow practising solicitors to offer non-reserved legal activities from unregulated businesses.

There have been notable reactions from both the Law Society and the Legal Services Consumer Panel (LSCP), with the former alleging that this was a 'serious error' that jeopardises the public interest without evidence that it will boost access to justice. The LSCP, meanwhile, stated that the changes are 'tilted too far against consumers' and urged the LSB and SRA to take responsibility for clear messaging to consumers as the changes are rolled out.

In addition to these headlines, the transitional arrangements for the Solicitors Qualifying Exam (SQE) were also approved as part of the application. While this does not constitute approval of the full implementation of the plans, it has reawakened debate in the legal press. In particular this has focused on the anticipated costs of taking the SQE and concerns about the ability of those from lower-income backgrounds to enter the legal profession. While the costs of taking the exam are projected to be between £3000 and £4500, this does not account for any preparatory training courses and there will not be loans available to cover the cost of the two-stage assessment.

Many commentators have observed that this could mean in practice that the new route is no cheaper than the existing Legal Practice Course (LPC) and that those qualifying at less prestigious universities will undoubtedly still face difficulties in finding firms to sponsor their training costs. The Law Society has stated that 'in the current system candidates can get a loan to take the LPC, and a similar solution must be found for the SQE so that all candidates, regardless of background, can qualify as a solicitor.' With the start date for the exam now pushed back to September 2021, it remains to be seen if these concerns about access to the profession from diverse backgrounds will be addressed.

#### **Transparency agenda gathers pace**

It has been well publicised that transparency rules in line with the CMA's 2016 report into the legal services market will be brought in by the SRA and CLC from 6 December. A recent [announcement](#) by CILEx Regulation confirms that their own set of transparency rules will come into force on 14 January. Each of the frontline regulators has produced guidance for the profession as to what is expected, and all three have worked together to ensure consistency of approach across the different regulated communities. LeO has contributed to the SRA's information with our own signposting guidance. The Law Society has acknowledged that many solicitors have misgivings about the rules, but has issued their own practice note to encourage compliance.

Meanwhile, the Legal Services Consumer Panel (LSCP) has expressed concern that there has been a 'distinct lack of progress and focus' on ensuring the public get information on quality. It has criticised the LSB for failing to challenge regulators on this, and has called for in-depth work to be done to ascertain the best quality indicators and optimal presentation of this information to consumers. There is particular concern that some regulators have opted to make transparency rules voluntary, which the LSCP feels creates unnecessary double standards.

➤ *Medium impact*

### **Scottish review of legal regulation publishes final report**

The Independent Review of Legal Services Regulation in Scotland has now concluded and its Chair, Esther Robertson, has published her [final report](#). The main recommendation to come out of the review is the creation of single regulator for the entire legal profession, which would take responsibility for entry to the profession, establishing standards and monitoring them, and dealing with all complaints and redress. The report therefore also recommends dissolving the current Scottish Legal Complaints Commission (SLCC), which it acknowledges does not work for any stakeholders as currently constituted.

Reaction to these recommendations has been mixed, with the Law Society of Scotland expressing concern about implications for the independence of the profession among other things. Indeed, the report acknowledges that some members of the review panel disagreed with the main recommendation on the basis that it had little evidential support.

At the same time, the Scottish Government has just launched a [consultation](#) on the topic of regulating success fees and damages-based agreements. If proposals go ahead as planned, these types of funding arrangements will have to conform to particular standards in future, and ministers will have the power to stipulate what the agreements must contain.

### **Changes in levels of complaints about mis-sold PPI**

The number of complaints about payment protection insurance (PPI) has surged by 63% to 3.7 million in the 10 months since the FCA's nationwide consumer campaign was launched. Interestingly, more than half (55%) of complaints have been made directly by consumers, compared to 45% before the campaign. This statistic suggests that use of CMCs to make claims on consumers' behalf has dropped, and therefore we are likely to see a corresponding drop in complaints about CMCs.

In addition, Paragon Personal Finance has made the decision not to appeal the recent ruling by Manchester county court that allowed claimants in PPI cases to demand a refund of the entire commission paid plus interest – not only the commission above 50% (the *Plevin* rule). The decision not to appeal means that the ruling will not become a mandatory precedent for other cases, and as such we are unlikely to see a surge in re-opening complaints where no payout was received.

### **BREXIT: public services and the future of the legal profession**

A potential Brexit deal has been agreed – although the parliamentary vote on this is still pending. This likely to have an impact on us regarding public sector funding and legislative timetabling.

Meanwhile the potential impact of Brexit on the legal sector continues to be debated. A recent report by Thomson Reuters on the impact of Brexit (in partnership with Oxford Economics and

The Law Society) examines the prospect of leaving the EU without an agreement and how this might negatively affect legal services. While there has been a surge in demand for legal advice due to the uncertainty presented by Brexit, this is likely to be short-term.

### **Developments at the Ministry of Justice and NAO departmental overview**

There have been a number of policy developments coming from the Ministry of Justice in recent weeks. These have included:

- Proposals for a new fee structure for employment tribunal cases, following the controversy involving UNISON and subsequent Justice Committee inquiry;
- The Civil Liability Bill (which introduces reforms for personal injury litigation) clearing the House of Commons and entering in its final stages before Royal Assent is given to establish it in law; and
- Criticism in Parliament of the 'slow approach' taken by the department to leasehold reform, which has left many in untenable situations with their housing.

At the same time, the National Audit Office (NAO) has published its [departmental overview](#) of the MoJ which highlights the range of cost pressures and strain on services it is experiencing at the moment, and identifies that its long-term financial sustainability depends on successfully delivering a set of challenging reforms.

### **Two-stage FOS casework review announced by Treasury Select Committee**

The impact of the Dispatches documentary on FOS continues to be felt as the Treasury Select Committee announced its response to a letter written by Caroline Wayman (FOS) regarding the case review their organisation would be undertaking. The response made it clear that the committee feels that FOS' current plans fall short of what is required. Nicky Morgan (Chair of the Treasury Committee) stated that many had contacted them 'with concerns that the FOS has failed to act with due diligence in their cases' and said the proposed review would not appropriately address these concerns.

Meanwhile the Financial Conduct Authority (FCA) has expressed concern about FOS' ability to adapt to its proposed expanded remit, which would allow small and medium-sized enterprises (SMEs) to lodge complaints with them from 1 April 2019. Minutes of the FCA's Board meeting reveal that the regulator's oversight committee, which is responsible for overseeing FOS and reviewing its plan and budget, has expressed concerns about the timing of the changes.

There also continues to be a number of questions in Parliament about the staffing and timescales at different ombudsman schemes (most recently, the Housing Ombudsman). Ombudsman schemes are still very clearly on the minds of MPs, and there remains notable attention and scrutiny of them in the press. This has increased in recent weeks with the widespread coverage of the launch of the new Rail Ombudsman at the end of November.

➤ *Low impact*

### **Counsel General for Wales argues for devolution of policing and justice**

Jeremy Miles, the current Counsel General for Wales, spoke at the Welsh launch event for Justice Week 2018 (29 Oct-2 Nov) in the National Assembly for Wales. Addressing an audience of legal practitioners, he highlighted cuts to Legal Aid as a major challenge to the justice system as well as the complexity and confusion involved in the integration of justice and public services in Wales. On this basis he argued that current arrangements are not fit for

purpose and that policing and justice need to be devolved in order to deliver a fair and equitable justice system in Wales.

While devolution of justice in Wales is unlikely to happen any time soon, these sentiments have been present in Welsh political discourse for some time. There has also been a trend towards giving more power to Cardiff following the passage of the [Wales Act 2017](#), which creates the possibility of a Welsh Parliament in 2021. If laws in England and Wales continue to diverge in the future, this is something which may well become a reality, especially in the post-Brexit world.

### **Solicitor-General launches legal education scheme for schools**

On 31 October, Solicitor General Robert Buckland QC MP announced his [vision](#) for public legal education (PLE) at an event in Parliament hosted by the All-Party Parliamentary Group for Public Legal Education and Pro Bono. The vision includes a commitment to high quality PLE based on robust evidence that shows what the need is and what works best, and an ambition for PLE to be embedded into public services and government departments in the future. All of this comes in addition to the establishment of a PLE Panel last year, made up of a number of frontline legal regulators and consumer advice groups.

### **Final LSB consultation on internal governance rules (IGR) published**

As part of their ongoing work to reform the relationship between legal regulators and their associated representative bodies, the LSB has launched a [final consultation](#) on the IGRs. The paper proposes a number of changes which will enhance the separation and independence of regulatory functions within the current legislative framework to provide greater clarity for all. If the proposals go ahead, this would have major implications for regulators such as the Institute of Chartered Accountants in England and Wales (ICAEW), whose functions are currently not separate.

### **Legal Aid sector responds to LASPO review**

As part of Justice Week 2018, a debate took place in Westminster Hall on the future of Legal Aid in the UK. During this, the Conservative chair of the Justice Select Committee Bob Neill called on the government to admit that it had gone too far in its cuts to legal aid. The issue has been in focus ever since the post-implementation review got underway earlier this year, and there have been many voices from the sector urging for reforms to be reconsidered.

Responses to the MoJ's call for evidence have highlighted the especially negative impact on children, prisoners, vulnerable women and immigration detainees, as well as the knock-on effect of a lack of early legal advice on those who are just above the current threshold for Legal Aid. Taken together, the submissions speak of a 'devastating effect' on access to justice and call for changes to current legislation. The current government review of LASPO is due to be published at the end of the year.

## **New appointments**

### **Assay Office: Carol Brady MBE appointed as Chair**

*Carol is currently non-executive Chair of the Board of the Claims Management Regulation Unit for the Ministry of Justice. She is also an Independent Advisory Member for the Commission for Local Administration in England (Local Government and Social Care Ombudsman) and a Commissioner for the Gambling Commission. Carol was a Senior Ombudsman at the Legal Ombudsman (2010-2014) and is currently undertaking part of the case review process at the Financial Ombudsman Service.*