

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	8
		<i>Paper No.</i>	90.8
<i>Date of meeting</i>	12/09/18	<i>Time required</i>	10 minutes

<i>Title</i>	<b>Horizon Scanning – September 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>
<p>Since the beginning of financial year 2018/19, the External Affairs team has been producing a horizon scan to inform senior members of the organisation of developments in legal regulation, claims management, the ombudsman landscape and beyond. Not only does this build knowledge and understanding of the external environment, but it assists with forecasting and allows us to consider policy responses well in advance of any changes in the landscape.</p> <p>The format of this paper has undergone some changes to make it more strategically focused.</p> <p>September's horizon scan highlights in particular a new review of legal regulation in England and Wales, greater scrutiny of the Financial Ombudsman Service, and new rulings/guidance which may see more complaints coming to us in both our CMC and legal jurisdictions.</p>
<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 – September 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 may affect...	Timeframe	Likelihood (1-5)	Demand
UCL independent review of legal services regulation in England & Wales	High	Access to redress and extent of our jurisdiction	Ends Dec 2019	5	Unclear
Recent county court ruling on PPI claims	High	Numbers using CMCs to claim PPI, increased volumes	Cut-off Aug 2019	1	↑
Independent review of FOS published	Medium	Confidence in ombudsman schemes	Ongoing	3	n/a
Legal Services Consumer Panel Tracker Survey results published	Medium	Attitudes towards (and evidence base for) CMA recommendations	2018	4	→
SLCC on use of artificial intelligence in complaints handling	Medium	Expectations of digital development, operating model/business process	N/A	2	n/a
Developments in CMC business areas and regulatory arrangements	Medium	Complaint volumes in different areas of service; attitudes to CMC transfer	Apr-Aug 2019	1	↑
Law Society comments on SRA Handbook changes	Medium	LSB decision about proposed regulatory changes	Spring 2019	3	↑
New Law Commission guidance on treatment of existing leaseholders	Medium	Numbers of complaints about failure to advise	Consultation in Sept 2018	2	↑
New Internal Governance Rules to be written by LSB	Low	Relationships between representative and regulatory bodies; our engagement	Effective from Spring 2019	1	n/a
Consultations from SDT about standard of proof and SRA on reporting misconduct	Low	Professional standards, conduct, disciplinary proceedings of profession	Ends 8 Oct 2018/ 27 Sept 2018	1 / 3	n/a
Rail Delivery Group (RDG) appoints first ombudsman for the rail industry	Low	Strength of ombudsman sector, public awareness	Launches Nov 2018	1	n/a
Ernst & Young takeover of 'disruptive' law firm reflects recent market change	Low	Composition of legal services market	Completes 31 Aug 2018	4	↑
Departure from the market of two major PII providers	Low	Attitudes towards proposed changes to minimum PII cover; costs for law firms	Aug 2018	3	n/a

# Horizon Scan – September 2018

## Details

### ➤ *High impact*

#### **UCL independent review of legal services regulation in England & Wales**

University College London (UCL) have just announced that Honorary Professor Stephen Mayson is undertaking a fundamental review of the current regulatory framework for legal services. Among other things, the independent review will consider issues and recommendations from the 2016 CMA's legal services market study.

The [terms of reference](#) specifically make mention of redress measures in several places, and any change to regulation of legal services could affect our jurisdiction. We will be looking to give evidence to the review and contribute to its findings, which will be presented to the Ministry of Justice (MoJ) at the end of 2019. We will need to respond directly within the next year, which is why it has a high impact. We are intending to invite Professor Mayson to attend a meeting of the OLC.

#### **Recent county court ruling on PPI claims**

A landmark ruling in Manchester County Court in July may change the way people have been claiming refunds for mis-sold payment protection insurance (PPI). The new ruling suggests that even if a PPI policy was not mis-sold, the buyer may still be able to reclaim because the scale of the commissions paid were excessively high.

While this does not mean that those who have already received compensation can claim again, it may allow cases that have been rejected to be reconsidered. The ruling is likely to be appealed, but if it stands we might could increase the use of CMCs which is likely to have an impact on complaint volumes, although any impact for the scheme would be very short-term in the context of the CMC jurisdiction transferring to FOS.

### ➤ *Medium impact*

#### **Independent review of FOS published**

On Wednesday 18th July, Richard Lloyd, the independent reviewer appointed by the Board of the Financial Ombudsman Service (FOS), Caroline Wayman (CEO & Chief Ombudsman of FOS) and Sir Nicolas Montagu KCB (Chair) appeared before the Treasury Select Committee. This evidence session discussed the findings of the independent review which followed accusations made in the Dispatches programme.

While the [review](#) concludes that there is no evidence of systemic bias in favour of financial services providers, the committee raised particular concerns about a restructuring project introduced in 2016 and the way this was communicated to staff from top levels in the organisation. There were also questions asked about timeliness and pressure on staff, potential for bias in the framework, and staff morale.

This is important to note in the broad context of increased parliamentary focus on ombudsman schemes and the wider ADR landscape. There has also been an increase in media interest over the last few weeks, including an article in *The Telegraph* on 13 August discussing the rights of consumers to have their case re-opened by FOS.

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## Legal Services Consumer Panel Tracker Survey results 2018

The Legal Services Consumer Panel (LSCP) has just released the [results of its annual survey](#) about use of legal services. These show that 84% of legal services consumers are satisfied with the service they have received, which is the highest score on this since the survey was launched. The proportion consumers who are dissatisfied with the services but do nothing has fallen to 35% (from 49% in 2017) and awareness of LeO has remained fairly stable at 64%.

Press around the survey results has focused on the LSCP's push towards increasing consumer 'shopping around' for legal service providers, which has received negative reaction in trade media. The website MyLegalAdviser has chosen this time to highlight its model as an alternative way to help consumers to shop around, rather than the price transparency measures recommended in the CMA's 2016 report.

## SLCC on use of AI in complaints-handling

David Buchanan-Cook, Head of Oversight and Communications at the Scottish Legal Complaints Commission (SLCC), recently published an [article](#) on the use of artificial intelligence (AI) in the complaint handling sector. While he ultimately concludes that AI cannot completely replace the SLCC and other ombudsman schemes, he acknowledges that there are 'aspects of AI which, if properly utilised, can speed up the more mundane parts' of the process.

This is interesting when considered alongside a [roundtable event](#) hosted by the *Law Society Gazette* in June about the role of new technology in dispute resolution. This is more evidence of the trend towards increased use of AI and other emerging technology to which we may well need to respond, and even begin to incorporate into our own process, in the future.

## Developments in CMC business areas and regulatory arrangements

Recent data shows that there was an 11% rise in new complaints about pension transfers in 2017-18, suggesting that CMCs are increasingly looking to these complaints as a new source of business after the PPI deadline in August 2019. Moreover there has been some publicity recently about making a PPI claims on behalf of a deceased relative, which may increase complaint volumes.

Justice Secretary David Gauke has written to the claims sector to dissuade them from making suspect holiday sickness claims. The SRA issued an updated warning notice in early August about guarding against false or dubious holiday sickness claims.

This comes alongside ongoing commentary that regulation of CMCs will be improved under the FCA, particularly with their intention to mandate that CMCs highlight free alternatives to their services. However there has been some negative press around the FCA's proposal to collect a substantial proportion of their transfer costs in the first year, rather than deferring recovery until 'a substantial body of fee payers' is in place.

## Law Society comments on SRA Handbook changes

The SRA has recently been criticised by the Law Society for 'pursuing a deregulatory agenda' in their rule change submission to the LSB which would allow solicitors to

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practice in unregulated businesses and as freelancers. The Law Society alleges that the application is ‘misleading’ and calls upon the LSB to reject the proposals on the basis that they are ‘contrary to the public interest’. They quote parts of our response to the consultation in their literature.

Meanwhile, the SRA published its [annual Risk Outlook](#) at the end of July, highlighting 10 priority risks that all solicitors and firms need to consider in the coming year. This includes access to legal services, cyber security, diversity and standards of service.

### **New Law Commission guidance on treatment of existing leaseholders**

New proposals to provide a fairer deal for leasehold homeowners have been announced by the Law Commission. Following on from plans by the Government to ban the sale of houses on a leasehold basis, the Law Commission has outlined a range of measures to help existing leasehold homeowners buy the freehold of their houses. The full proposal document [can be found online](#).

While it remains to be seen as to whether these measures will be taken on and implemented, if the two-year waiting period is lifted for leasehold homeowners, we may see a flurry of legal activity on these cases soon. This could include an increase in complaints against solicitors who did not inform their clients of the leasehold situation at the time of purchase.

➤ *Low impact*

### **New Internal Governance Rules to be written by LSB**

Following its [consultation](#) on the internal governance rules (IGRs) for the legal service regulators, the LSB has now committed to developing new rules which will be applied from April 2019, along with new supporting guidelines. These will be designed to provide more clarity on the oversight role of the approved regulators and the LSB, and reduce the number of disagreements between regulators and representative bodies. Interestingly, the new rules will apply equally to the accountancy regulators as well.

While the IGRs will have little to no bearing on our engagement with Approved Regulators, it builds on the emerging trend towards changes in regulatory arrangements – especially in the legal services sector, which be crucial to the UK’s global offering post-Brexit.

### **Consultations from SDT about standard of proof and SRA on reporting misconduct**

The Solicitors Disciplinary Tribunal (SDT) has issued a [consultation](#) proposing a change to the standard of proof in disciplinary proceedings. Currently the SDT uses the ‘criminal’ standard which requires a conviction only when evidence is beyond reasonable doubt. This consultation suggests that the SDT might move to the ‘civil’ standard of conviction on the balance of probabilities, which would bring it in line with the disciplinary tribunals of the other regulators. The consultation ends on 8 October.

Following a recent SDT ruling, it has also emerged that there is ‘some uncertainty’ as to whether non-lawyer partners of alternative business structures (ABSs) can be banned by the SRA from working in the profession. This is interesting in the context of

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a greater push towards innovative new structures, but has not yet received much attention in the trade press.

At the same time, the SRA is consulting on when compliance officers, solicitors and firms should report a potential serious breach of SRA rules to the regulator. The [consultation](#) runs until 27 September.

### **Rail Delivery Group (RDG) appoints first ombudsman for the rail industry**

The Rail Delivery Group (RDG) has appointed the Dispute Resolution Ombudsman (DRO) to establish the first ombudsman for the rail industry in November of this year. The DRO is a private scheme (with voluntary membership) which currently operates the Furniture Ombudsman service. The RDG has confirmed that decisions made by the ombudsman will be legally binding for train companies, and the DRO will have the power to hold companies to account.

### **Ernst & Young takeover of ‘disruptive’ law firm reflects recent market change**

Big Four accountancy firm Ernst & Young have announced their takeover of Riverview Law, a firm described as ‘disruptive’ for its innovative approaches to legal services. The firm has used technology to streamline its overheads and offer managed services to in-house teams for fixed fees instead of hourly rates.

This takeover is another indicator that big accountancy firms are moving decisively into the legal services market – of which they already hold a large share. However this is unlikely to impact on us, as they will be providing services to large commercial organisation which fall outside of our remit.

### **Departure from the market of two major PII providers**

Libra Managers, which provides cover to 20 of the top-200 law firms, has confirmed that it will not underwrite any new business from 1 October. In so doing, it joins Aspen Insurance UK, who announced their departure from the PII market on 1 August. This may drive up costs for firms when they come to renew their PII cover in October, and could affect whether the SRA continue with their proposals to reduce minimum cover.

## **New appointments**

### **Solicitors Regulation Authority (SRA): Anna Bradley to become Chair from 1 January 2019.**

*Ms Bradley is currently Chair of the Zurich Financial Independent Governance Committee, and of the End-User Council of the new Payments Systems Regulator. She also chaired the Council for Licensed Conveyancers (CLC) from 2010-2015.*

### **Intellectual Property Regulation Board (IPReg): Rt Hon Lord Smith of Finsbury (Chris Smith) to become Chair from 7 September 2018.**

*Lord Smith was most notably Secretary of State for Culture, Media and Sport from 1997-2001, and was an MP until 2005. He is also currently Master of Pembroke College at the University of Cambridge.*