

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	7
		<i>Paper No.</i>	98.5
<i>Date of meeting</i>	26 September 2019	<i>Time required</i>	5 minutes

<i>Title</i>	Horizon Scanning – September 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 month's horizon scan features developments from July and August in their entirety. This is always a quieter time of year due to parliamentary recess and summer holidays, but we have still seen some significant announcements from the LSB, renewed debate around SRA policies, and some interesting comments on organisations in the ombudsman sector during this period.</p> <p>Moreover, with parliamentary debate ongoing regarding the handling of Brexit, this horizon scan looks at projections for the legal services market in the event of no deal. It also covers developments regarding the property sector (especially with reference to leasehold issues) as there has been some movement on this over the summer.</p> <p>It is clear that this is a time of rolling regulatory change within legal services, and increased scrutiny from oversight bodies both in the legal services market and the ombudsman sector.</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 – September 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
SRA provides more information on how 'independent solicitors' can operate	High	Our jurisdiction, engagement with regulators/profession	3	n/a
Law Society warns about impact of no-deal Brexit on legal services market	Medium	Our operating environment, complaint volumes, access to justice	4	Unknown
Government publishes response to select committee report on leasehold reform	Medium	Awareness of LeO, complaint volumes, engagement with regulators/profession	3	↑
BSB pulls funding for Legal Choices website	Medium	Credibility/success of the platform as a public educator	3	↓
LSB explores further public legal education initiatives	Low	Legal literacy of public, understanding of protections	2	n/a
Defence Committee expresses concerns about Service Complaints Ombudsman	Low	Confidence in ombudsman model	2	n/a
Pensions Ombudsman to explore early resolution techniques	Low	Trends in ombudsman sector	4	n/a
Report recommends new regulator for property agents	Low	Regulatory environment, crossover with legal profession	1	→
'Legal Access Challenge' launched by SRA receives strong response	Low	Development of AI, trust in regulation	4	n/a
Controversy arises around SRA's pilot of super-exam SQE	Low	Quality of education/training, trust in legal services	2	↑
Thematic review of criminal justice advocacy	Low	Pressure in criminal justice sector, service standards	4	↑
LSB decisions on transparency, standard of proof and internal governance rules	Low	Regulatory environment, stakeholder relations	3	n/a

Details

➤ *High impact*

SRA provides more information on how ‘independent solicitors’ can operate

Several months in advance of the launch of the new Solicitors Handbook, the SRA has issued a number of [guidance notes](#) about the working arrangements for ‘independent solicitors’, which is the agreed name for freelance/individual self-employed solicitors going forward. Amongst other things, these highlight that such solicitors may wish to set themselves up in chambers-style arrangements, where admin support is provided without direct employment of the staff by individual solicitors.

This could potentially impact on the way that we investigate complaints and the scope of work that would fall into our jurisdiction. We continue to engage with the SRA on several elements of their ‘Looking to the Future’ programme to ensure that the changes are wholly positive for access to justice.

Meanwhile, legal regulation expert Paul Bennett has been warning solicitors to be cautious about rushing into these setups, as they potentially will not suit everyone. However, he also advises that people should learn about the positive aspects of the rule changes, and that particularly for experienced solicitors in low-risk areas of work, the new setup could be very attractive.

With the professional indemnity insurance (PII) market [looking increasingly unsteady](#), it is not clear whether these ‘independent solicitors’ will find insurers willing to offer them the ‘adequate and appropriate’ insurance demanded by the new rules. It remains to be seen whether we will see large numbers of legal professional looking to change their working setup after November.

➤ *Medium impact*

Law Society warns about impact of no-deal Brexit on legal services market

The Law Society has joined the calls on Government to avoid leaving the EU without a deal. In a [paper](#) written in August 2018, the Law Society predicted that should we leave the EU without a deal, UK legal services turnover would decrease by £3.5 billion (around 10% of current turnover), and the sector could lose up to 10,000 jobs. On the basis of this they have renewed their calls on the UK Government recently to seek to negotiate a future agreement with the EU that contains provisions allowing English and Welsh solicitors to maintain their right to practise in the EU.

It is unclear at the present time whether a new deal will be negotiated with the EU, but it is a real possibility that the UK could leave without a deal on 31 October. If this were to happen, we could see a drop in providers as the English and Welsh legal services market becomes much less attractive, increased pressure on remaining files, and resultant drop in service standards. Alternatively, the reduction in the size of the market could simply mean fewer retainers and therefore fewer complaints. Regardless of the eventual outcome, uncertainty is clearly unhelpful for the legal services market and the attractiveness of this major UK export.

Government publishes response to select committee report on leasehold reform

Following the publication of the Housing, Communities and Local Government Select Committee’s report on leasehold reform on 20 March 2019, the government has now issued its [formal response](#) to the report. On the recommendation about ADR services, the government has affirmed its confidence in the ability of our scheme (as it stands) to address complaints about lawyers who have

acted in these matters. The response also includes several commitments to investigating and changing arrangements in the leasehold sector by way of a CMA inquiry, a Law Commission project, a separate working group, and some work already done on industry pledges.

At the moment there is no further action for us to take on this, except to maintain a watching brief to see if we will need to take new definitions or laws into account when determining poor service. We will consider further direct engagement if appropriate.

BSB pulls funding for Legal Choices website

The Bar Standards Board (BSB) has announced that from 1 November 2019, it will stop funding the Legal Choices website, which aims to give consumers guidance on how to choose providers and navigate the legal services market more generally. Until now, the website has been jointly funded by all of the legal regulators, with the SRA providing the biggest share.

Legal Choices has attracted some criticism in the past few years, with several stakeholders arguing that it has not served its purpose well, and that the information should be updated and better organised. Indeed, the CMA recommended in its 2016 legal services market study that the website be ‘revamped’, and LeO has been sitting on the steering group which aims to make this happen, alongside representatives from other stakeholders in the market.

Although the BSB maintains that it will still contribute content to the website, this move is likely to weaken the credibility of Legal Choices as a tool for public legal education. It may be that in the future, other legal regulators choose to follow suit by looking to invest their funding into other projects to achieve their regulatory objectives. This could mean that we move backwards in our collective efforts to educate the public better on how to choose a service provider and how the legal services market operates.

➤ *Low impact*

LSB explores further public legal education initiatives

The LSB is looking to move forward with its business plan commitment to ‘being at the forefront of enhancing public legal education’ by exploring regulatory levers such as thematic reviews of regulators’ work on PLE and setting targets for improving the public’s legal capability. As yet it is unclear which of these avenues it might pursue, but LeO has been involved in some early conversations about how we can contribute to any work around regulatory protections.

Defence Committee expresses concerns about Service Complaints Ombudsman

A scheduled inquiry by the Defence Select Committee into the work of the Service Complaints Ombudsman for the Armed Forces has found that it is suffering from ‘large backlogs and unacceptable delays’. The [report](#) is relatively sympathetic to the organisation, recognising that its burden has been disproportionate to its resources since it was reformed in 2015. It also identifies that a widening of remit, unwillingness on the part of the Ministry of Defence to cooperate in good time, and poor first-tier complaint handling by individual armed forces have all contributed to the overall challenging picture.

This is similar to other coverage that we have seen about ombudsman schemes over the past two years. A common theme across most (although not all) is a lack of funding/resources set against high demand, which drives poor satisfaction with the service.

Pensions Ombudsman to explore early resolution techniques

Following a [consultation](#) on 'dispute resolution provisions and widening of jurisdiction', the government has announced that the Pensions Ombudsman will be exploring an 'early resolution route' for resolving complaints that are less complex in nature. It is envisaged that this will be relatively quicker and therefore more cost-effective than the current process, and will allow parties to find a resolution in a less formal manner. As yet it is not clear what these early resolution techniques might include, but it demonstrates part of a trend in the ombudsman sector towards achieving more rapid and increasingly less formal resolution to complaints.

The government has also published its [Tailored Review](#) of the Pensions Ombudsman, and has concluded that it is 'a well-respected and effective organisation'. This positive appraisal indicates that there could be some useful learning gained from asking them to share best practice with others in the sector.

Report recommends new regulator for property agents

The Regulation of Property Agents Working Group, which was set up in October 2018 to advise the government on a new regulatory approach to letting, managing and estate agents, published its [final report](#) in July. In this the group recommends that a new regulator should be established, accountable to the Secretary of State for Housing, Communities and Local Government and funded by regulated firms and individuals.

They propose that the jurisdiction of this new regulator should cover 'all those carrying out property agency work' across the sector, including both licensed individuals and firms, and that regulation should depend on a list of 'reserved activities' which can only be performed by licensed property agents. The group would also like to see an obligation imposed on lawyers and other professionals to report possible illegal agent behaviour to the new regulator. It will be interesting to see how this might affect existing arrangements in the housing sector and intersect with government plans to take action on leasehold reform.

'Legal Access Challenge' launched by SRA receives strong response

The SRA has announced that it is using its £700,000 government grant to run a project with innovation foundation Nesta, called the '[Legal Access Challenge](#)'. Through this they are seeking ideas for widening access to justice by using technology, and offering grants of £50,000 for development of the best ideas they receive. The insights and knowledge gained from any development using these grants is required to be made available across the sector.

After receiving 117 'high quality' applications for these grants, the SRA has secured extra funding for the award. It had previously received some criticism from the profession that too much of the original (£700k) grant will be going towards running the programme, rather than research itself.

Alongside this, the LSB has released a [paper](#) which indicates that achieving buy-in for technology regulation from everyone involved in the 'lawtech' landscape (from developers through to end users) is crucial to it working well.

Controversy arises around SRA's pilot of super-exam SQE

Following the completion of the stage one pilot of the new Solicitors Qualifying Exam (SQE) designed by training company Kaplan, several disputes over the [findings](#) have emerged in the trade

press. The initial results of the pilot have led the SRA to announce that they are considering pulling the written skills element of the first exam, on the basis that BAME applicants were performing worse on this element than their White counterparts. It is argued that this could have a marked negative effect on diversity in the profession, although many commentators and influential figures in the legal profession have vocally disagreed with this conclusion.

Legal academic Professor Richard Moorhead and the Association of Law Teachers (ALT) have criticised the rigour of the SQE pilot and the lack of data provided in the report, making it difficult to draw conclusions on its effectiveness. The SRA has not yet announced any intentions to publish the full dataset of the pilot, but has pushed ahead with recruitment for participants for stage two.

Thematic review of criminal justice advocacy

It has emerged from the SRA's latest thematic review into criminal advocacy that around 90% of firms working in criminal justice are generally pessimistic about the sector and its future. Several of these reported that due to wider use of 'out of court disposals' (where someone does not need to appear before a court), the sector has started to shrink markedly. Others voiced concerns that the criminal justice system now appears to concentrate on speed and cost, at the expense of justice.

Meanwhile, the SRA have indicated that they plan to introduce a centralised advocacy assessment for higher rights of audience. This means that in future, only solicitors with this qualification will be able to undertake advocacy in more serious cases being conducted in the youth courts – although solicitors contend that there is little chance of getting anyone to take on this poorly funded work in any case, especially if there are further barriers to doing so. The SRA has launched a [consultation](#) to gather views on its proposals, which will close on 13 November.

The SRA's focus on this area of work is tied to direction from the LSB's regulatory performance reports published in January 2019, which identified advocacy quality as an area of risk that needed to be tackled by several regulators. In its latest update on performance, the LSB has said that while the BSB has met the standard for improving the quality of advocacy, the SRA and CILEx Regulation still have some work to do in this area.

LSB decisions on transparency, standard of proof and internal governance rules

The Legal Services Board has made a number of decisions about the legal regulatory environment of late, including approving the Master of the Faculties' application to bring transparency requirements into their rules; allowing the Solicitors Disciplinary Tribunal to change their standard of proof from the criminal to the civil; and making a more definitive statement on the independence of regulatory and representative functions in their review of the Internal Governance Rules.

While the first of these is unlikely to cause much in the way of debate amongst the profession, the second has attracted much concern and criticism, as it did throughout the consultation process. The third of these is perhaps not as significant as anticipated, in that the LSB has not recommended a complete divorce of regulatory and representative functions, and so disagreement on this amongst the Approved Regulators (and potentially the Ministry of Justice) looks likely to continue.

Meanwhile, in late July, new research was published which appears to indicate that compliance with SRA transparency rules is improving. Three months on from the SRA's findings that only around 25% of firms were fully compliant with the rules, business software provider Advanced has found a

42% rate of total compliance. This, it claims, shows ‘that the majority of firms are making a real effort to comply’ and will assist consumers in shopping around, which (according to the Legal Services Consumer Panel’s latest [Tracker Survey](#)) is a behaviour that continues to become more common year-on-year.

Appointments, departures and awards

Neil Buckley appointed as Chair of Institute and Faculty of Actuaries Regulation Board commencing July 2019. Neil left his post as Chief Executive of the Legal Services Board in August 2019.

Caroline Rookes appointed as Interim Chair of The Pensions Ombudsman effective immediately. Caroline was Chief Executive of the Money Advice Service until 2017, and prior to that she was Director of Private Pensions at the Department for Work and Pensions (DWP).

Nick Goodwin appointed as Public Guardian (and CEO of OPG) from 1 July 2019, following the retirement of Alan Eccles after a seven-year term. Nick was formerly the MoJ director for access to justice policy.

APPENDIX 1

Actions to be taken

How will the Legal Ombudsman be responding to the issues highlighted above?

It is important to note that for many of these issues, we would simply look to monitor the events and decisions around them, waiting for wider trends to crystallise before taking any concrete action. There are also a number of matters that impact upon our operating environment and the stakeholders with whom we engage, but do not directly affect our work. These are included to inform our conversations with others in the legal services market, the ombudsman landscape and beyond, and to help us to understand motivations and identify opportunities for collaboration.

The issues listed below are those where we have determined to do more than this, and are included for the OLC Board to understand better the way horizon scanning informs our strategic planning and engagement.

Operational Transformation and External Affairs are working together to maintain a log of all items featured in horizon scans from the beginning of this financial year (2019/20), so that we can track issues and our response to them.

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SRA provides more information on how 'independent solicitors' can operate

We are currently in ongoing conversations with the SRA about the various implications of their Handbook reforms, mostly focusing on solicitors working in unregulated entities. We will be including this new issue around chambers-style setups at our next meeting on the issue, which is due to take place in early October.

Law Society warns about impact of no-deal Brexit on legal services market

We will be carefully monitoring developments around Brexit in Parliament, and will remain engaged with other stakeholders in the legal services market to help with forecasting and monitoring.

Government publishes response to select committee report on leasehold reform

We will continue to track volumes of complaints coming to us on this issue, and will keep abreast of any developments from organisations working on the issue (especially the CMA). Depending on the direction of travel, we may look to contribute to conversations where they concern reasonable service standards. We will also be seeking further engagement with the Property Ombudsman to understand where issues of redress may overlap.

Pensions Ombudsman to explore early resolution techniques

We have contacted the Pensions Ombudsman to initiate discussions on best practice and will use the learning from this to inform our own strategic approach.

LSB explores further public legal education initiatives

We will remain in contact with the LSB about any initiatives they are looking to pursue, and link in with any work on understanding regulatory protections, which is a main area of concern for us.