

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	11
		<i>Paper No.</i>	101.8
<i>Date of meeting</i>	27 January 2020	<i>Time required</i>	10 minutes

<i>Title</i>	<b>Horizon Scanning – January 2020</b>
<i>Sponsor</i>	Sarah Ritzenthaler – Parliamentary and Policy Officer
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

<b>Executive summary</b>
<p>This report covers developments in our external operating environment over December 2019 and January 2020. For what should normally be a quiet time of year, there have been several significant regulatory and legislative developments – perhaps due to the timing of the General Election. The items highlighted here span a broad range of issues that are cross-sector in some cases, indicating that reform is on the agenda for many at the moment.</p> <p>Amidst this, dissatisfaction with ombudsman schemes continues as a long-standing trend that will be important to watch over the coming year, particularly as more legislative time becomes available to BEIS. As we look to the future in finalising our corporate strategy for 2020-23, it is crucial that we take account of changes both in legal services and beyond, to ensure that we can fulfil our refreshed mission and strategic objectives.</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 – 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
Rip-Off Britain criticises ombudsman schemes in line with APPG findings	High	Our reputation and perception of ombudsman schemes	4	↓
Legal sector forecast shows demand for lawyers will increase while total employment falls	Medium	Composition of the profession and levels of service	3	↑
Research sheds lights on 'on-shoring' practices of London-based firms	Medium	Complaints about costs information	3	↑
Consumer Panel supports own initiative powers and extension of remit for LeO	Medium	Potential development and extension of our scheme	2	↑
Options for reforming valuation in leasehold enfranchisement published by Law Commission	Medium	Levels of satisfaction for leaseholders	4	→
Divorce reform legislation back in Parliament	Medium	Experience and complaints in family law cases	4	↓
SRA abandons changes to professional indemnity insurance rules	Medium	Regulatory protections and remedies available to clients	3	→
ICO launches consultation about guidance on explaining AI decisions	Medium	How we determine investigations involving lawtech	5	→
LSB reports on performance of frontline legal regulators	Low	Effectiveness and reputation of frontline regulators	2	n/a
Negotiations begin on new EU collective redress rules	Low	Wider consumer protection agenda	1	n/a
Progress on the design of the new Solicitors Qualifying Exam	Low	Education and customer service levels of new legal professionals	3	Uncertain

## Details

### ➤ *High impact*

#### **Rip-Off Britain criticises ombudsman schemes in line with APPG findings**

The BBC consumer series *Rip-Off Britain: Live* will feature a piece on the consumer ombudsman sector in the UK in an episode due to air 20-24 January. It will highlight many of the issues previously flagged by the All-Party Parliamentary Group for Consumer Protection in its report produced with MoneySavingExpert. These include issues of incomplete sector coverage, variable enforcement powers, wait times for complaints to be investigated, and the need for a 'single portal'.

The programme will feature several main consumer case studies, although none of these pertain to the Legal Ombudsman. Donal Galligan, Director of the Ombudsman Association, will be appearing as a spokesperson in the studio, and Yvonne Fovargue MP (Chair of the APPG) will be providing a recorded piece.

While it is possible that the Legal Ombudsman will not be mentioned by name at all, the programme is likely to have a negative impact on public perception of ombudsman schemes in general, which may lead to greater customer dissatisfaction with our service. However, there may also be some advantage in lowering expectations, and it might be that the Legal Ombudsman will be mentioned in a positive light, as our enforcement powers are amongst the most robust in the sector.

### ➤ *Medium impact*

#### **Legal sector forecast shows demand for lawyers will increase while total employment falls**

[Research](#) released by the Law Society has indicated that total employment in the legal services sector is likely to fall by 4% in the next seven years, with most of this reduction focusing on legal secretaries and support staff. By contrast, demand for legal professionals will rise, with around 7000 lawyers needing to be recruited every year, which is roughly 600 more than are currently entering the profession each year.

Meanwhile, a [report](#) produced by TheCityUK shows strong growth in the total revenue of UK legal services over the last two years – from £33bn in 2017 to £35bn in 2018, which is an increase of just over 6% – with specialist law firms outperforming generalist law firms.

Chancellor of the High Court, Sir Geoffrey Vos, has maintained that the UK legal sector must offer 'forward-looking technologically-enabled dispute resolution' that is 'affordable and free from delays' in order to remain competitive on the global stage. The government appears to be of the same view, announcing £2m in funding for the LawTech Delivery Panel over the next two years.

However, the Law Society warns that if we see faster adoption of new technological solutions such as artificial intelligence, this could mean a greater decline in the number of people working in legal services (closer to 7% by 2027, including a 4% decrease in the number of lawyers).

For LeO, these forecasts indicate that we need to be prepared for great automation in legal services, with clear policies on how we will consider accountability for decision-making. It also may mean that more of the administrative burden falls on lawyers themselves, which could result in poorer overall service as providers juggle multiple demands on their time.

## **Consumer Panel supports own initiative powers and extension of remit for LeO**

In its [response](#) to the interim report of the UCL Independent Review of Legal Services Regulation, The Legal Services Consumer Panel (LSCP) has come out in strong support for an extension of LeO's jurisdiction and powers. Following more general reflections on the findings of the report, the LSCP devotes a significant portion of its response to our role in the market. It states that 'there needs to be an expansion of the Legal Ombudsman role, preferably covering all legal services, both regulated and unregulated' and that LeO should be 'empowered to start investigations on its own initiative, particularly when the intelligence it gathers highlights systemic problems'.

This is the clearest support we have seen (so far) from major stakeholders for the suggestions made by Professor Stephen Mayson about how LeO can play an even more effective role in the legal services sector. It is unclear yet what bearing this will have on the final report, which is due to be submitted to the MoJ in March 2020. The consultation on the interim report closed on 20 December.

## **Research sheds lights on 'on-shoring' practices of London-based firms**

Academics from the University of Birmingham and University College London (UCL) have released a [research paper](#) which suggests that a number of prominent London law firms are choosing to allocate many client matters to regional offices in order to increase profit margins – a practice referred to as 'on-shoring'. The paper suggests that such practices may not be strictly compliant with SRA conduct rules, as in some cases clients will be unaware that work is being completed at lower cost without the firm's fees being adjusted from London pricing.

The paper does not specify whether clients of these law firms are commercial or private individuals, and as such it is difficult to know whether this may affect the complaints we see coming to LeO. However, the findings are noteworthy in the context of the current emphasis on price transparency in legal services, and it will be interesting to see whether they are addressed publicly by the SRA.

## **Options for reforming valuation in leasehold enfranchisement published by Law Commission**

The Law Commission of England and Wales [published a report](#) on 9 January that sets out options to reduce the cost that leaseholders have to pay to buy the freehold or extend the lease of their homes. The reforms have the potential to make the process easier and more affordable for millions of leaseholders across England and Wales. The report puts forward a range of options to reduce the cost of leasehold enfranchisement as well as clarifying and simplifying the law – making the process itself easier and less expensive to operate.

In the coming months, the Law Commission will be making further recommendations for reforms to improve the current complex enfranchisement system, as well as publishing reports on reforms to make commonhold a viable alternative to leasehold, and on improvements to the law that gives leaseholders the right to manage their properties.

All of this is directed towards addressing the ongoing issues around leasehold properties and the need for reform of the system. While the above will have limited impact on our findings about legal service providers involved in leasehold transactions of this nature, it may mean fewer people seeking redress in the long term as their situation improves.

## **Divorce reform legislation back in Parliament**

After attempts to pass the Divorce, Separation and Dissolution Bill were thwarted twice in the last parliamentary session, the legislation is now back in front of Parliament following the recent election

and Queen's Speech. It was introduced in the House of Lords on 6 January and has been welcomed by family lawyers.

Among other things, the new legislation will bring in the possibility of no-fault divorce and remove the option to contest divorce proceedings, which are aimed at reducing conflict and improving situations for children. This also has the potential to reduce complaints that come to us about matrimonial matters, as retainers may be shorter and clients generally happier with outcomes.

### **SRA abandons changes to professional indemnity insurance rules**

The SRA has [announced](#) that it will not after all pursue its intended reform of professional indemnity insurance (PII) requirements. This comes at the end of a five-year project to reduce the PII burden on firms and costs for consumers. In 2014, the SRA consulted on a plan to reduce minimum cover to £500,000, but this was not approved by the LSB, and so further research was undertaken and more developed proposals consulted on in 2018. This consultation attracted 160 responses, LeO's amongst them, largely expressing concerns over increased risk and complexity.

On the basis that the proposals were unlikely after all to deliver intended benefits, the SRA have decided not to introduce any changes to PII. Furthermore, it will be making alterations to its proposals for changing the Compensation Fund rules, and will publish its next steps on this in the coming months. This will remain of interest to us, as our response also expressed concerns about changes to the Fund and the impact this could have on the remedies we award.

### **ICO launches consultation about guidance on explaining AI decisions**

The Information Commissioner's Office (ICO) has recently launched [a consultation](#) relating to artificial intelligence and how businesses should explain the decisions made by such software to the individuals affected by those decisions. The ICO has produced draft guidance on this in conjunction with the Alan Turing Institute, and is consulting to ensure that it is applicable in the real world and easy for organisations to use. The consultation period closes on 24 January 2020.

The outcome of this could be useful to LeO as it may give an indication of how we should consider accountability when determining reasonable service. As mentioned earlier in this paper, this will become increasingly important if the sector continues to adopt technological solutions in order to remain internationally competitive.

➤ *Low impact*

### **LSB reports on performance of frontline legal regulators**

The Legal Services Board (LSB) has published its [latest report](#) on the progress of each of the frontline regulators against its regulatory performance standards. There has been some version of this report produced since 2012, but the current framework was introduced in January 2018. The LSB has concluded that 'generally the pace of delivery is slow and governance over regulatory performance must improve', and is concerned that frontline regulators have not yet embedded the framework into their own governance arrangements.

There was some criticism of the two biggest regulators – the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB) – regarding transparency of governance and public legal education respectively. On the contrary, the Intellectual Property Regulation Board (IPReg) was praised for being the first of the regulators to have all standards considered as 'met' by the LSB. It is also useful to understand which of the regulators are embarking on wide-ranging reform; this

report notes that the Costs Lawyers Standards Board (CLSB) is currently doing so and showing good progress.

For those standards where the LSB considers that action is still required, regulatory bodies must provide the LSB with plans to remedy any performance issues by 31 January. This means that the BSB, SRA, Faculty Office and Institute of Chartered Accountants in England and Wales (ICAEW) will all have to submit further action plans to the oversight regulator this month.

### **Negotiations begin on new EU collective redress rules**

The European Council and European Parliament are about to begin negotiating the final terms of legislation that would mean that consumers will be able to defend their rights collectively and more efficiently across the EU. The draft rules allow consumer organisations to represent the collective interest of consumers, seek remedies and enforce higher levels of protection in cases that span across national borders. Collective action would be authorised against violations in areas such as data protection, financial services, travel and tourism, energy, telecommunications, environment and health.

It has not yet been determined whether the directive will be an opt-in or an opt-out arrangement, and how this will affect the UK in the context of Brexit. While any great impact on LeO is unlikely, it is interesting to note the general trend towards increasing consumer protection, particularly as services become increasingly globalised.

### **Progress on the design of the new Solicitors Qualifying Examination**

In early December, the SRA published final detailed information about the legal knowledge that will be tested in the Solicitors Qualifying Examination (SQE). The [specification](#) is now available on the SRA's website, having been updated to ensure clarity and precision, and to reflect changes made as a result of the SQE1 pilot. There is still some way to go in developing the full exam, however, as the skills assessment element of SQE1 still needs to be finalised, and the pilot of SQE2 is awaiting evaluation.

Recent Law Society research has indicated that legal education institutions in England & Wales should take note of emerging skills gaps in literacy and numeracy while those in problem-solving, client handling, and planning and organisation reduce. This is interesting in the context of concern from the profession that the SQE will result in a 'dumbing down' of legal education; it remains to be seen whether the SQE will be able to address these gaps adequately to shore up the reputation of legal professionals for the future.

Meanwhile, leaked documents about talks between the UK and USA revealed a potential problem for England and Wales solicitors over the mutual recognition of qualifications post-Brexit. As a qualifying law degree will no longer be required to take the SQE, solicitors in this jurisdiction may struggle to practise in the USA due to recognition there being based largely on the duration and substance of a lawyer's education, rather than simple recognition of title.

## **Appointments, departures and awards**

*None to report for this period.*