

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	8
		<i>Paper No.</i>	95.8
<i>Date of meeting</i>	29 April 2019	<i>Time required</i>	15 Minutes

<i>Title</i>	Horizon Scanning – April 2019
<i>Sponsor</i>	Rebecca Marsh – Chief Ombudsman
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

Executive summary
<p>Unusually, this period has seen a number of significant changes within specific areas of law, and fewer developments within the regulatory environment more generally. It has been a busy time for the Ministry of Justice (MoJ), which has made a number of announcements, including a major change in divorce proceedings, and some smaller changes relating to costs and fees. These are likely to have some impact on the complaints that come to LeO, as costs are consistently our top complaint type year-on-year, and matrimonial law is one of our biggest areas for complaint.</p> <p>Outside of this, we are again in a time of political uncertainty due to the deadline for exiting the European Union being extended and the impact this has on business and professional services.</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.

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	Timeframe
Leasehold reform update	High	Residential conveyancing complaint volumes	3	↑	Q2 2019/20
SRA residential conveyancing thematic review	High	Awareness of service issues in conveyancing	3	↑	Q2 2019/20
Law firm insolvencies increase in 2018	Medium	Remedies and enforcement	2	↑	2019
Consultation on fixed recoverable costs for litigation	Medium	Complaint volumes	3	↕	2020/21
New graduated structure for probate fees	Medium	Complaint volumes	5	↑	Q3-Q4 2019/20
Lord Chancellor announces reform of divorce process	Medium	Complaint volumes	4	↓	2020/21
Court ruling on success fees in personal injury cases	Low	Complaint volumes, use of legal representation	4	→	June 2019
BSB highlights access to justice in new strategic plan	Low	Regulatory focus and wider aims in legal services market	2	n/a	2019 – 2022
Changes to SDT standard of proof	Low	Reputation of solicitors	5	n/a	25 Nov 19
Legal Services are GREAT moves to next phase	Low	International reputation of UK legal services	3	n/a	April 2019

Details

➤ *High impact*

Leasehold reform update

Following the publication of a [report](#) on leasehold reform by the Select Committee for Housing, Communities and Local Government, there has been further movement from stakeholders in the property sector. Just over a week after the report came out, the Ministry for Housing, Communities and Local Government (MHCLG) announced their support for a new [industry pledge](#) which commits to getting rid of unfair and costly clauses in leasehold contracts.

The pledge was signed by more than 40 developers, freeholders and managing agents, but has been met with muted enthusiasm from the Chair of the Select Committee, who maintains that it will be 'difficult for [leaseholders] to trust developers and freeholders to deliver on such pledges'. He also expresses disappointment 'that the Government has not yet taken a more vigorous approach to tackling the serious failures in the leasehold system'.

Nevertheless, a full response from MHCLG has not yet been published, and as such the government's approach to the report's recommendations is still not clear. LeO continues to engage with major stakeholders to establish the best way for us to contribute and ensure that consumers are fully informed about their avenues for redress.

SRA residential conveyancing thematic review

Amidst the debate over leasehold contracts and the best way to put things right for consumers, the Solicitors Regulation Authority (SRA) has published their annual [thematic review](#) on residential conveyancing. It is currently receiving particular attention from the trade press (and beyond) as there is specific consideration of leasehold issues, including the type of advice provided in leasehold transactions and time spent on key stages of the conveyancing process.

The report finds that in 23% of leasehold purchases, solicitors did not explain the difference between freehold and leasehold models of ownership, and 26% of leaseholders couldn't recall being given a draft copy of their leasehold contract to review prior to signing it.

There are also some interesting findings about costs information and price transparency, indicating that there is still some way to go on this. The review found that 34% of firms carried out additional work that was not initially anticipated or discussed with the client, suggesting that firms could potentially be providing unrealistic initial quotes in order to win business. Despite many expressing that residential conveyancing should be one of the most straightforward areas of law for price transparency, problems clearly persist.

As a result of the findings of the review, the SRA referred six cases for possible disciplinary action.

➤ *Medium impact*

Law firm insolvencies increase in 2018

Insolvency Service [figures](#) released recently indicate that 39 law firms became insolvent in 2018, up 70% from the 23 in 2017. There is some speculation that this is due to a number of firms taking out multiple business loans from various lenders at the same time, and that this is likely to be incentivised further in 2020, as high street banks are predicted to limit traditional credit streams offered in the legal services sector.

However, the Law Society tells a more positive story in its mid-sized law firm [‘health check’](#). Their Financial Benchmarking Survey 2019 shows a median rise in income of 4.2%, as well as a 6% increase in median fee income per equity partner, over the past year. This indicates that despite challenges in the regulatory and political environment, the legal services sector is still healthy and makes a good contribution to the UK economy.

Consultation on fixed recoverable costs for litigation

The Ministry of Justice (MoJ) has just launched a [consultation](#) into extending fixed recoverable costs to other (higher value) areas of civil litigation following the success of this model for low-value personal injury cases. Fixed recoverable costs prescribe the amount of damages that can be claimed back from a losing party in civil litigation. They are used to keep disputes from continuing for an unnecessarily long period, allowing costs to be controlled and kept to a manageable level.

This work focuses on the last part of a wide-ranging report on civil costs by Sir Rupert Jackson, some of whose recommendations informed the LASPO Act 2012. The consultation will run until 6 June 2019. If the government does choose to extend fixed recoverable costs, this may have an impact on the number of cost complaints in litigation cases that we see.

New graduated structure for probate fees

A new probate fee structure has been announced by MoJ and is awaiting parliamentary approval. The new legislation will raise the threshold for payment of a fee to £50,000, and introduce a graduated fee structure for all those above the threshold, up to a maximum of £6000 depending on the size of the estate. Fees are currently fixed at £215 (or £155 for those who use a solicitor). If the new structure is introduced, we may see an increase in costs complaints for this area of law as consumers become more concerned with the overall costs of probate and estate administration.

MoJ has confirmed that the extra revenue raised from increased fees will be used to offset a shortfall in funding of the courts service. However, there has been some vocal opposition to the changes from members of the profession, and it may be that Opposition MPs will seek to block the legislation when it is debated in Parliament.

Although the revised fees were set to be introduced on 1 April 2019, this has been delayed due to ongoing parliamentary debate around Brexit, which meant there has been no time to schedule an approval motion. It remains to be seen when there may be parliamentary time available – but we do know that if the legislation is approved, the new structure will come into force just three weeks later.

Lord Chancellor announces reform of divorce process

Divorcing couples will soon be able to apply for a no-fault divorce under reforms [announced](#) by the Lord Chancellor earlier this month. The new proposals have been brought forward following a public consultation conducted in late 2018, to help reduce ongoing family conflict and maximise the opportunity for couples to reconcile if possible.

Proposed changes include replacing the need for evidence of irretrievable breakdown with a simple statement, allowing joint applications (while retaining sole applications), removing the ability to contest a divorce, and introducing a minimum timeframe of six months. Current laws demand that spouses demonstrate unreasonable behaviour, adultery, desertion, or years of separation, even in cases where a couple has made a mutual decision to part ways.

The reforms may mean that we see a reduction in complaints in matrimonial law, if indeed proceedings become less contentious as a result.

➤ *Low impact*

Court ruling on success fees in personal injury cases

On 3 April, a judge in the Court of Appeal ruled that a personal injury firm was not entitled to a claim the maximum limit of 25% of total damages as their success fee without reference to the risks of taking on the case. This ruling is likely to have a significant effect on the turnover of personal injury firms, as many have a policy of setting their standard success fee at this maximum level, in order to spread the risk across cases.

This may mean an increase in costs challenges from dissatisfied former clients. The vast majority of these will probably be conducted through the courts system, but we may also see a small increase in costs complaints related to personal injury law. However, we are also expecting to see a drop in complaints in this area of law once the full effects of the Civil Liability Act 2018 are felt, as new provisions are likely to mean that fewer people instruct legal service providers to represent them in these cases.

BSB highlights access to justice in new strategic plan

On 29 March, the Bar Standards Board (BSB) published its [Strategic Plan](#) for 2019-22, its [Business Plan](#) for 2019-20, and its latest [Risk Outlook](#) on the market for barristers' services. Largely, their forward planning is focused on ensuring the success of various regulatory changes that have been introduced over the past few years. However, interestingly one of their strategic aims is to 'advance access to justice in a changing market' by considering the impact of new technologies and poor public understanding of the law on the administration of justice.

This is another indication of a future shift in regulatory focus for legal services. It comes after announcement of new policy objectives by the Legal Services Board (LSB) which include improving public legal education, while moving away from a former focus on encouraging competition in the legal services market.

Changes to SDT standard of proof

It has been confirmed that the Solicitors Disciplinary Tribunal (SDT) will be applying to change the standard of proof for professional misconduct hearings from the criminal to the civil standard. This was announced only a week after the BSB implemented their new rules for barristers to move to the civil standard as well. This will mean that in future, charges of misconduct will be judged 'on the balance of probabilities' rather than needing to be proved 'beyond reasonable doubt'.

The application will be made to the LSB despite opposition from the profession expressed in responses to the SDT's consultation – and even (formerly) from the SDT itself. The change has been justified on the basis of protection of the interests of the public and maintaining the reputation and standing of the solicitors' profession. The changes are anticipated to come into effect on the same day as the revised SRA Handbook is launched (currently set for 25 November 2019).

Legal Services are GREAT moves to next phase

The latest stage of the Legal Services are GREAT campaign is now underway, with leading legal professionals travelling to Nigeria in early April to drive collaboration between law firms and business in London and Lagos. Over three days representatives from both countries engaged in skill sharing

workshops, talks and seminars offering expertise in infrastructure and cross-border transactions, as part of a wider government drive to strengthen ties with emerging global economic partners.

In the context of Brexit, it is highly likely that emphasis on standards in the legal services sector will continue to prevail, as the market is a key contributor to the UK economy and our legal jurisdiction has wide international appeal. As LeO begins to focus more on feeding back to the profession to raise service standards, we can start to contribute to this narrative and demonstrate the value that an ombudsman service brings to the sector.

Appointments, departures and awards

Legal Services Board: Catherine Brown, Tim Sawyer CBE and Ian Hamer OBE *have been appointed as new lay Board members for 4-year terms commencing 1 April 2019 (Ms Brown and Mr Sawyer) and 1 October 2019 (Mr Hamer). Non-lay Board members **Jemima Coleman** and **Michael Smyth CBE QC** have been reappointed for second terms of office from 18 April 2019, and lay member **Catharine Seddon** has been reappointed commencing 1 October 2019.*