

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	13
		<i>Paper No</i>	96.10
<i>Date of meeting</i>	24 June 2019	<i>Time required</i>	15 Minutes

<i>Title</i>	<b>Horizon Scanning – June 2019</b>
<i>Sponsor</i>	Sarah Ritzenthaler, Parliamentary and Policy Advisor
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

<b>Executive summary</b>
<p>This month's horizon scan features fewer major changes than in previous papers, as developments appear to have slowed at this time. Largely the issues reported below are part of recurring themes, and reflect the matters that have been in focus for the past year, including regulatory reform, AI and ADR scrutiny.</p> <p>A new appendix has been added to outline the steps we will be taking in response to the highest impact issues detailed here. This has been included at the request of Board members for more information about the implications of items discussed in this paper.</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 – June 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
Non-compliance with new transparency rules by SRA firms	High	Awareness of LeO; complaint volumes	3	
CMA investigates potential breaches of consumer protection law in leasehold housing market	Medium	Complaint volumes and remedies	4	
Professor Stephen Mayson speaks about regulatory reform at Legal Futures conference	Medium	Views on extending our jurisdiction and wider legal regulation	2	n/a
ICAEW approved to license the administration of oaths	Medium	Extent of our jurisdiction	3	
Lord Chancellor announces increased funding for 'lawtech'	Medium	How we determine reasonable service	5	Unknown
LSB approves further 'Looking to the Future' application from SRA	Medium	Our remedies; consumer protection	4	
Personal Injury market anticipated to reduce significantly due to Civil Liability Act reforms	Low	Categories of complaints that come to LeO	3	
Regulators indicate commitment to keeping cost of regulation down	Low	Profession's perception of regulatory burden	3	n/a
Greater focus on wellbeing in the legal profession	Low	Culture of legal services	2	n/a
UK Finance plan to set up separate ombudsman scheme for more SMEs	Low	Current ADR/ombudsman landscape	2	n/a

## Details

### ➤ *High impact*

#### **Non-compliance with new transparency rules by SRA firms**

Following the first 'random web sweep' conducted by the SRA to spot-check compliance with the new transparency rules, it has emerged that only 25% of firms are fully complying with the requirements that came into force on 6 Dec 2018. This is perhaps unsurprising, given the levels of resistance to these measures that have been evident amongst the profession since they were first recommended by the Competition and Markets Authority (CMA).

Of particular interest for us is that over half of firms (52%) are not publishing the required complaints information. This could mean that until compliance improves, we do not see as much of an impact on the number of contacts we receive as we had first anticipated. At the moment there is no clear indication of whether or how enforcement action might be taken.

Other common areas of non-compliance relate to costs information (especially disbursements) and information on timescales of particular legal matters. A [new survey](#) of consumers of legal services has revealed that 77% of consumers are more likely to use law firms that publish their fees online. Given the current indifference amongst many legal professionals to the new transparency requirements, it remains to be seen as to whether this will drive compliance in the interests of attracting and retaining clients.

### ➤ *Medium impact*

#### **CMA investigates potential breaches of consumer protection law in leasehold housing**

On 11 June 2019 the Competition and Markets Authority (CMA) announced that they were beginning an investigation into the leasehold housing market. This will look at potential leasehold mis-selling, and whether leasehold contract terms are onerous and unfair in relation to ground rent, permission and other charges. This appears to be a direct response to the report on leasehold reform produced by the Housing, Communities and Local Government Committee in March, as one of the recommendations made was that the CMA should indicate its view on whether onerous terms could be unenforceable.

Largely the investigation seems to be aiming its initial call for evidence at consumers, although the CMA does mention that information will be gathered from 'a range of market participants'. The initial response period ends on 12 July. It will be important for us to note the outcome of this investigation, as it will have a bearing on how we deal with leasehold advice complaints that come to us in the future.

#### **Professor Stephen Mayson speaks about regulatory reform at Legal Futures conference**

In a speech made at a recent legal conference, the leader of UCL's Independent Review of Legal Services Regulation has shared a little more about the development of his thinking on the central issues of the legal regulatory framework. Professor Stephen Mayson stated that one of the 'big questions' for the profession was whether legislation should be altered so that universal access to the Legal Ombudsman is offered for all those who have received legal advice. This would, of course, have huge implications for us regarding both our business process and the volume of complaints we receive.

Although previously his papers have indicated a preference for activity-based regulation, Professor Mayson on this occasion expressed the difficulties of putting this into practice. He highlighted that professional titles remain a major issue but indicated that moving away from the use of these could be more complicated than initially anticipated. This is likely to be explored further in his interim report on the review, which is due to be published in September this year.

### **ICAEW approved to license the administration of oaths**

Following the success on this particular point of the Institute of Chartered Accountants in England and Wales' (ICAEW) judicial review application, the Lord Chancellor has now reconsidered the case for the regulator to be able to license one additional reserved legal activity.

Previously ICAEW had hoped to extend their licensing power to allow accountants to offer the full range of reserved legal activities in relation to tax, but were refused at the final approval stage by the then Lord Chancellor, David Lidington. However, on the basis of a court ruling earlier in the year, David Gauke has now reviewed this matter and decided that they should be allowed to license the administration of oaths.

In [his letter](#) he highlighted two elements in support of this decision: that it would offer greater access to justice, and that the ICAEW's proposed governance arrangements would suffice for this one small legal activity. This will mean that our jurisdiction extends very slightly, as we will now be able to investigate complaints about accountants who perform this additional legal activity.

### **Lord Chancellor announces increased funding for 'lawtech'**

Speaking at the Artificial Intelligence in Legal Services Summit, the Lord Chancellor has pledged £2m for supporting the development of artificial intelligence (AI) projects in the legal services market. This is in addition to the £6.9m awarded to legal technology projects by the government's 'next generation services' fund, and the £700,000 funding from the regulator pioneer fund for the Solicitors Regulation Authority's data-driven innovation in legal services project.

This announcement joins the call of the Legal Services Consumer Panel (LSCP) for regulators to encourage an ethical approach to AI, before the technology becomes widespread. As research commissioned by the LSCP shows, 47% of consumers lack trust in AI technology used to deliver legal services, and so there is some way to go in building confidence.

In a [paper](#) published by the LSCP on 22 May, they cite the Law Society's belief that trust in 'fintech' has been encouraged by the Financial Conduct Authority's (FCA) willingness to engage on the issue, and their specific approval of certain technologies. It is this, they say, that is currently missing in legal services and should be addressed.

As development of AI continues in the legal services field, we will maintain an overview of key developments to ensure that our decisions take into account AI involvement in service delivery.

### **LSB approves further 'Looking to the Future' application from SRA**

The SRA is continuing to prepare and introduce various provisions as we draw closer to November of this year, when they will officially launch their new regulatory models. This particular application confirms the position that in both models, professional indemnity insurance (PII) cover will not have to meet the current minimum terms and conditions, and that clients of solicitors working in unregulated entities will not have access to the Compensation Fund.

As noted in our response to the *Looking to the Future* consultation, this will potentially impact on the ability of complainants to recover remedies awarded by us, and will have a bearing on our management of consumer expectations at the outset of an investigation.

The application was approved despite the ongoing protests of the Law Society, which has been lobbying for 'adequate and appropriate' PII cover to be more clearly defined, and is concerned that PII is only required where reserved activities are being delivered. As an eleventh-hour bid, the Law Society wrote to the LSB in April to attempt to prevent the measures being passed, but the LSB was satisfied that there was no reason to refuse the application.

The UK Legal Services Consumer Research Report 2019 indicates that 58% of consumers would be prepared to use freelance solicitors, if this would result in lower fees or a more flexible service. However, just 22% reported knowing if their legal services provider was regulated or not, and just 12% were aware of whether they could take a complaint to the Legal Ombudsman. While not directly relating to PII, these figures once again highlight how unaware consumers are about regulation and the consumer protections available via different providers. While clients of freelance solicitors will have access to our service, there are notable differences in the level of other after-the-event protections such as PII, and we have voiced our concerns previously on how this may impact on trust and confidence in the legal profession and the regulatory framework.

➤ *Low impact*

### **Personal injury market anticipated to reduce significantly due to Civil Liability Act reforms**

Further to the changes reported in the personal injury market in the last horizon scan, a new survey of personal injury lawyers has revealed some unpromising statistics about the future of this area of law. Six months on from the Civil Liability Act being passed, 42% of personal injury firms are reporting a drop in profit and anticipate further reductions in staff and cashflow in the future. Around 13% of firms stated that reforms might lead to their firm closing down completely.

If trends continue in this direction, it is possible that we will see fewer consumers attempting to settle small claims at all, particularly with the uncertainty surrounding the Litigant in Person portal. It may also mean that consumers will increasingly turn to claims management companies for this type of issue, as these will no doubt be looking for new revenue streams after the PPI deadline passes in August of this year. Personal injury cases account for 14% of our complaints. As yet it is unclear how such a shift might affect our complaint volumes, but it is possible that personal injury may represent a much smaller proportion of our work going forward.

### **Regulators indicate commitment to keeping cost of regulation down**

The Council for Licensed Conveyancers (CLC), who have long made the case for their bespoke approach to regulation, have recently announced that they intend to reduce their practising fees significantly to reflect the high compliance rate in their regulated community. In their [consultation paper](#), the CLC proposes reducing the annual licence fee rates paid by CLC-regulated firms by up to 20%, and contributions to the Compensation Fund by up to 60%. This forms part of a long-term strategic commitment to reducing the financial burden of regulation.

Meanwhile the Law Society has announced that they will be freezing their practising fee for the third year in a row, despite their budget and the SRA's going up, and revenue from other sources reducing. However, with more solicitors on the roll than ever, costs can be spread across a greater number in order to keep fees steady.

The Law Society was due to run a project on whether to calculate the practising fee on the basis of firms' turnover, but it has had to postpone this until 2020. In the meantime, the LSB has committed to reviewing 'permitted purposes' as part of their business plan, which will affect the funding allocated to the representative functions of all of the Approved Regulators.

In light of this trend, LeO will need to ensure that its value for money proposition is robust and well communicated going forwards.

### **Greater focus on wellbeing in the legal profession**

There has been growing concern internationally about wellbeing and mental health in the legal community over the past few years. In recent months, a new campaign was launched in England & Wales called #SupportingSolicitors, which promotes help that is available for solicitors facing challenging circumstances in work and home life, and is supported by the Law Society, SRA and a number of legal services charities.

Meanwhile, the Junior Lawyers Division (JLD) of the Law Society has highlighted the results of the 2019 resilience and wellbeing survey which revealed that more than 93% of respondents reported feeling stressed in their role in the month before completing the survey. One in 15 junior lawyers also reported that they had experienced suicidal thoughts as a result of stress at work. The JLD has warned the SRA that the new Solicitors Qualifying Exam (SQE) could compound these statistics, as they fear that current provisions may lead to exploitation of pre-qualification solicitors during the work experience element of the SQE.

This comes in the wider context of a [report](#) published in May by public body ACAS, which reveals that 66% of British workers reported feeling stressed or anxious about work over the past year. The most common reasons given for the way they felt included workloads (60%), the way that they were managed (42%) and balancing home and work lives (35%). We will ensure that our work, both with providers and internally, continues to take account of wellbeing issues.

### **UK Finance plan to set up separate ombudsman scheme for more SMEs**

Earlier this year, the remit of the Financial Ombudsman Service was extended to allow small and medium enterprises (SME) to take complaints to them about financial service providers. However, this extension is limited to SMEs with a turnover of less than £6.5m, meaning that there is still a redress gap for some business. The threshold above which court processes ought to be accessible to businesses is £10m, according to reports produced by the LSB. The banking industry has therefore taken it upon itself to provide a voluntary ADR scheme for SMEs with turnover of between £6.5m and £10m, who are currently not able to complain to the Financial Ombudsman Service.

It is interesting to note this industry-led approach in a climate where ADR is increasingly being scrutinised, and appetite for reform appears to be growing. It remains to be seen as to whether this desire to provide accessible redress for SMEs might eventually make its way into other sectors.

## **Appointments, departures and awards**

**Legal Services Board: Matthew Hill appointed as Chief Executive** *commencing 20 August 2019. He leaves his post as Executive Director of Strategy, Policy & Communications at the General Dental Council. Until November 2015, he was Director of Regulatory Risk and Analysis at the Gambling Commission, following a series of senior civil service roles over 16 years.*

**Financial Ombudsman Service: Baroness Zahida Manzoor CBE appointed as Chair** *commencing 2 August 2019. She succeeds Sir Nicholas Montagu who is stepping down after more than seven years. Baroness Manzoor was previously the Legal Services Ombudsman for England and Wales and*

*the Legal Services Complaints Commissioner until the OLC established the Legal Ombudsman. She was appointed to the House of Lords in 2013 and served as Government Whip from March 2018 until May 2019.*

## 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 will be working together to maintain a log of all items featured in horizon scans from the beginning of this financial year (2019/10), so that we can track issues and our response to them.

--

#### **CMA investigates potential breaches of consumer protection law in leasehold housing**

We are continuing to engage with the Ministry for Housing, Communities and Local Government as they produce their response to the Select Committee report, and will liaise with the CMA at a later stage of their investigation.

#### **ICAEW approved to license the administration of oaths**

We will be reviewing documents such as our Operational Protocol with ICAEW and internal guidance to ensure this is all up to date by the time this measure comes into effect.

#### **LSB approves further 'Looking to the Future' application from SRA**

Knowledge of regulatory protections has been a concern of ours for some time, and we have already started work with the Legal Services Board (LSB) on improving public legal education around these issues.

#### **Greater focus on wellbeing in the legal profession**

We will be looking at how research into the impact of complaints on those complained about might inform our guidance to the profession and our internal procedures for handling service complaints.