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| <i>Meeting</i> | OLC Board | <i>Agenda Item No.</i> | 12 |
| | | <i>Paper No.</i> | 94.10 |
| <i>Date of meeting</i> | 20/03/19 | <i>Time required</i> | 15 Minutes |

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| <i>Title</i> | Horizon Scanning – March 2019 |
| <i>Sponsor</i> | Rob Powell – Chief Executive Officer |
| <i>Status</i> | OFFICIAL |
| <i>To be communicated to:</i> | Members and those in attendance |

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| Executive summary |
| <p>During the February-March period we have seen an upswing in parliamentary discussion of issues that directly affect us – including leasehold complaints, effectiveness of ombudsman schemes, and complaints and standards in the legal profession.</p> <p>There is also growing noise around the structure of regulation across the different legal jurisdictions of the UK, and the perception of these on a global level.</p> <p>This presents both an opportunity and a challenge for the Legal Ombudsman, as we are seeing a lot of movement and discussion about consumer protection and how to support a changing market. This is a time in which scrutiny is increasing from a number of sides, although with this comes the opportunity for impact on powerful players in the wider socio-political environment.</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 – March 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... | Timeframe | Likelihood (1-5) | Demand |
|--|--------|--|----------------|------------------|-------------------|
| Action against solicitors for leasehold claims | High | Complaint volumes | Apr 19 onwards | 4 | ↑ |
| Parliamentary activity on ombudsman schemes | High | Trust in the ombudsman sector and scrutiny of LeO | Jan 19 onwards | 3 | → (short term) |
| Law Society continues to speak out against LSB for their SRA Handbook decision | High | How we conduct our investigations; transparency of our work with SRA | Feb-Jul 19 | 2 | n/a |
| Stephen Mayson publishes next two papers for the UCL Review | Medium | Our position in the legal services sector | Mar-Dec 19 | 3 | n/a |
| Update on the work of the Commission on Justice in Wales | Medium | Our jurisdiction; focus of our engagement | 2017-2019 | 2 | ↓ |
| Developments and discussion about reporting misconduct to the SRA | Medium | Reputation of the legal sector; misconduct referrals | Jan-Mar 19 | 3 | ↑ |
| ICAEW judicial review dismissed | Low | Regulatory environment and innovation | Mar 19 | 4 | → |
| Debate continues in Scotland about future regulatory framework | Low | Wider opinion on changes to E&W jurisdiction | Oct 18 onwards | 4 | n/a |
| CILEx announces desire to give regulatory arm complete independence | Low | Stakeholder engagement with regulators | Jan 19 | 4 | n/a |
| New types of law firm emerging into the legal services market | Low | Composition of legal sector; number of complaints | Feb 19 | 3 | ↑ |

Details

➤ *High impact*

Action against solicitors for leasehold claims

This month has seen a resurgence in concern over the issue of leasehold properties and onerous ground rent, with one national law firm announcing that it has set up a specialised team to work on negligence claims against lawyers who failed to warn their clients about onerous clauses in their leasehold contracts. A co-founder of the National Leasehold Campaign (a lobbying group) confirmed in late February that she would be issuing proceedings against her former solicitors.

Heather Wheeler MP (Parliamentary Under-Secretary for Housing, Communities and Local Government) has encouraged disappointed leaseholders to complain to the Solicitors Regulation Authority (SRA) and to the Legal Ombudsman (LeO) about their solicitors. She spoke about the issue in Parliament on 27 February, and has encouraged leaseholders to seek impartial legal advice about potentially onerous ground rents, or to contact the Government's Leasehold Advisory Service.

The government have taken legal advice which says that it would be very expensive for them to forcibly change the terms of leasehold contracts across the country. This is likely to mean that we will see an increase in people seeking redress through our scheme.

Until a test case reaches the courts, the extent to which a solicitor must shoulder the blame in these disputes remains somewhat unclear. It will be particularly important for us to take a consistent approach to all of these complaints if we do see demand increase.

Parliamentary activity on ombudsman schemes

On 30 January, the All-Party Parliamentary Group (APPG) on Consumer Protection launched a [report](#) on the outcomes from their ombudsman inquiry in which they made recommendations for reform of the sector. These largely do not affect us, although the report does call for greater oversight of ombudsman schemes, especially by Parliament.

Just a week after this, there were three Parliamentary Questions issued by the same MP (Fiona Bruce, Con) asking ministers of the relevant departments about their oversight of PHSO, LGO, and FOS. Specifically she asked 'what steps the Government is taking to ensure the effectiveness' of these schemes. While all the questions were the same, they were each answered quite differently. This is interesting in view of the finding in the APPG report that the sector lacks consistency.

The following day, Gareth Thomas MP (Lab) asked the Secretary of State for Justice how many complaints were received about the performance of barristers and solicitors over the last five years. The response given highlighted the role of the OLC, SRA and BSB.

More recently, the Defence Committee has been proceeding with their planned inquiry into the work of the Service Complaints Ombudsman, and the Housing, Communities and Local Government Committee have been considering the work of the Local Government & Social Care Ombudsman. The Office of Rail and Road (ORR) are also in the process of making it mandatory for all train service providers to be a member of the Rail Ombudsman, which is in line with APPG report recommendations.

With growing parliamentary awareness and interest in the work of ombudsman schemes, it is important that we are mindful of reputational impact in all of our engagement with MPs.

Law Society continues to speak out against LSB for their SRA Handbook decision

The Law Society (TLS) have stood in vocal opposition to the SRA Handbook changes ever since the proposals were made. In early February, they continued their [correspondence](#) with the Legal Services Board (LSB) about its decision to approve the SRA's rule change application. They cited major concerns about information remedies and their effectiveness, as well as the impact on vulnerable consumers and unmet legal need.

TLS sees the lack of impact assessment in this application to be a major flaw, and so are calling on the LSB to make it mandatory that these are conducted and submitted for any future rule change applications. They have reiterated the need for an evidence-based approach to regulation very recently in their response to the LSB's business plan for 2019/20.

The Law Society's ongoing dedication to opposing the Handbook changes aligns with their response to our business plan, in which they have indicated their particular desire to see how we are working with the SRA on issues related to the Handbook changes.

At the same time, former Executive Director of the SRA Crispin Passmore has emerged in the legal press urging the SRA to implement the changes as soon as possible. He states that solicitors and firms are eager to get started and that the SRA could issue a "general waiver" to the profession to allow them to begin working in the new ways in advance of formal implementation. He suggests that any delay must be damaging if we accept that these changes will widen choice and improve access to justice.

This ongoing discussion within the legal regulatory environment makes it all the more important that we are clear externally about the work LeO is doing to address these matters.

➤ *Medium impact*

Stephen Mayson publishes next two papers for the UCL Review

As mentioned during his visit with the OLC Board in January, Professor Mayson has published two further working papers for the UCL Independent Review of Legal Services Regulation. These papers seek to identify (a) matters that should be the focus of regulatory attention and (b) the best structure for regulation.

As always, the review reflects a specifically 'local' feeling about the effectiveness of our legal regulatory framework. A [report](#) by the UN Task Force on Justice recently held the England & Wales legal regulatory model up as one to emulate, on the basis that it fosters innovation and accessibility. This is a very different perspective from the one within, which is characterised by claims of deteriorating access to justice and calls for review of legislation and framework.

Not all bodies are keen to see changes made to the framework at this time, however. The Law Society have published their response to the review, which clearly indicates that they oppose any recasting of regulation at this time, citing uncertainty due to Brexit and the SRA Handbook changes. Nevertheless, *Legal Futures* [reports on](#) the 'strongest indication yet that the present government is interested in reviewing legal regulation' from Lord Keen, who has spoken out about the need to reform our framework so that we can cope with and adapt to new technologies and the challenges they present to legal services.

Update on the work of the Commission on Justice in Wales

The [Commission on Justice in Wales](#) was set up by the Welsh government in 2017 to review the operation of justice, policing and the legal sector in Wales, and to set a long-term vision for the future. Since February 2018, it has received more than 170 written submissions, and is in the process of taking oral evidence from a wide range of key witnesses at the moment. We are currently considering how we might be able to contribute to this work.

The [terms of reference](#) for the commission include ensuring that jurisdictional arrangements and legal education address the distinct issues that arise in Wales and promote the strength and sustainability of the Welsh legal services sector. The commission is particularly considering the challenges facing the legal sector in Wales and the most effective ways to meet those challenges. It is scheduled to publish a report of its findings and recommendations later this year – these may potentially have implications for LeO's jurisdiction and the approach we take to complaints from Welsh consumers and about Welsh firms.

Meanwhile, the Bar Council have announced that their meeting in July 2019 will take place in Cardiff, and have invited any barristers in the area to join them. In the context of Brexit and the jurisdictional questions it raises, it is important for LeO to consider in more detail its specific work on Welsh complaints.

Developments and discussion about reporting misconduct to the SRA

Discussions are continuing within the legal services environment about reporting misconduct to the SRA. Recent contributing events include the SRA publishing its intention to update reporting obligations, and the Solicitors Disciplinary Tribunal's (SDT) decision to strike off a young whistleblower who took part in falsifying documents for two years.

In the midst of ongoing disagreement between service providers about the fairness of this decision, Sir Desmond Swayne MP (Con) posed a Parliamentary Question to the Solicitor General on 31 January about whether he had discussed reforms to the oversight of solicitors with the Secretary of State for Justice.

This was particularly in reference to EcoHouse investors, and the SRA's discretion with regard to compensation. Barry Sheerman MP (Lab) added that in his view, 'the current regulation does not seem to be working'. While the response on the day was not definitive, it will be interesting to see whether these questions have an impact on the government's appetite for reforming legal regulation.

➤ *Low impact*

ICAEW judicial review dismissed

Following a hearing in the High Court, it has been announced that the Judicial Review challenge issued by the Institute of Chartered Accountants in England and Wales (ICAEW) against the former Lord Chancellor (the Rt Hon David Lidington MP) has been dismissed. This means that his decision to deny ICAEW their application to regulate the full range of reserved legal activities stands – except that the decision regarding the administration of oaths must be reconsidered.

This brings to an end a disagreement that has been ongoing since September 2017, although ICAEW Executive Director Duncan Wiggetts has expressed surprise and disappointment at the judgement, suggesting that this 'makes a lottery of all future applications' to the LSB. For LeO, this simply means that we will no longer need to scope how the change in authorisation might affect our jurisdiction when considering complaints about accountants.

Debate continues in Scotland about future regulatory framework

Following publication of the Robertson Review, an event was held on 13 February at the Royal Faculty of Procurators in Glasgow to debate the future of legal services regulation in Scotland. This was attended by members of the review that came down on either side of the major recommendation to create a single regulator with responsibility for most aspects of authorisation and redress. The event was lively but no consensus was reached, except that things are unlikely to change overnight.

Meanwhile, The Law Society of Scotland has issued a [written response](#) to the review, stating that they do not believe the failures in the complaints system arise from the fundamental structure of regulation, and therefore they do not support the recommendations of the review. Indeed it is not all of the processes of the Scottish Legal Complaints Commission (SLCC) that are identified as problematic. Stakeholders generally agree that it is the particular element of ‘hybrid complaints’ that needs reform at this time.

The Law Society of Scotland would like to see a model similar to ours in England and Wales, which clearly demarcates elements of conduct and service. They have expressed that ‘LeO has demonstrated that their adopted model for complaint redress works’, and suggest that the SLCC therefore be replaced with a Scottish Legal Ombudsman Service. It remains to be seen which of the proposals will be taken on by the Scottish Government in the future.

CILEx announces desire to give regulatory arm complete independence

In their [response](#) to the LSB’s consultation on internal governance rules (IGRs), CILEx has said that its initial goal will be to achieve as much independence for its regulatory arm (CILEx Regulation) as is possible under the current rules. They then intend to lobby for changes to legislation (including to the Legal Services Act 2007) that would give this independence a firm statutory basis. CILEx cautioned that the LSB had not completely succeeded in removing subjective language from the IGRs, and that this risks encouraging alternative interpretations and disputes.

This response comes in stark contrast to those of the Bar Council and Law Society, the latter of which has said it is “deeply concerned” that new rules proposed by the LSB could largely prevent it from either lobbying or criticising the SRA.

In related news, the LSB has closed its investigation into the Law Society’s governance arrangements – which led to an unprecedented public censure last year – after being satisfied by the reports of reforms by TLS. Representatives of the SRA have stated publicly that they are still not happy with some of the requests that come through to them from TLS and will continue pushing for total independence. However, Anna Bradley, the new chair of the SRA Board, has said in an interview in the legal press that she’s less concerned about the fact of structural independence and more focused on ensuring that the SRA are able to do the things required to fulfil their objectives.

New types of law firm emerging into the legal services market

Recent news reports have indicated that new types of firm are emerging in the legal services environment. This includes claims management company the National Accident Helpline (NAHL) beginning to trade as a law firm to manage ‘the full life cycle’ of personal injury claims. The newly formed National Accident Law will have a bespoke online platform for case management and will be committed to cutting out ‘unnecessary paperwork’ for customers. This may well be an early response to changes brought in by the Civil Liability Act (2018) regarding personal injury litigation.

In addition, Sheffield Hallam University has become the first to set up a fully functioning student law firm to allow individuals to gain work experience during their studies. SHU Law became an SRA-licensed ABS in January 2019 with the aim of providing students with a 'strong dose of commercial acumen'. In the context of ongoing changes to qualifications requirements to become a solicitor or barrister and an emphasis on competition in the legal services market, we may see a number of institutions follow suit in the future.

Appointments, departures and awards

Legal Services Consumer Panel: David Abbott, Paul Crook, Owen Derbyshire and Liz Owen have been appointed as panel members (for 3 and 4 years terms). The appointments replace Andrew Foster, Catharine Gallagher and Frances Harrison whose second and final terms end in spring 2019.

Financial Services Consumer Panel: Wanda Goldwag has been appointed as Chair for a 3 year term beginning 1 March 2019. The FSCP is an independent statutory body, set up to represent the interests of consumers in the development of policy for the regulation of financial services.

Neil Buckley (Chief Executive, LSB) has announced that he is leaving his post later this year. He will stay in role until late summer or until a successor has been appointed.

Richard Collins (Executive Director, SRA) is also leaving his position as head of policy, education and anti-money laundering to take up a position at the Royal Institution of Chartered Surveyors (RICS).

Helen Phillips (Chair, LSB) has been nominated for the 2019 Non-Executive Director (NED) awards in the not-for-profit/public service organisation category.