

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	13
		<i>Paper No.</i>	91.11
<i>Date of meeting</i>	17 October 2018	<i>Time required</i>	15 Minutes

<i>Title</i>	Horizon Scanning – October 2018
<i>Sponsor</i>	Rob Powell – Chief Executive Officer
<i>Status</i>	OFFICIAL
<i>To be communicated to:</i>	Members and those in attendance

Executive summary
<p>Since the beginning of financial year 2018/19, the External Affairs team has been producing a horizon scan to inform senior members of the organisation of developments in legal regulation, claims management, the ombudsman landscape and beyond. Not only does this build knowledge and understanding of the external environment, but it assists with forecasting and allows us to consider policy responses well in advance of any changes in the landscape.</p> <p>There have been further changes made to the format of this paper to assist with communication of analysis and impact.</p> <p>October's horizon scan highlights in particular major changes to regulators' rules, including flexibility in where service providers can practice, what information they must provide to the public about their services, and how they are trained before they become qualified. It also notes recent research into opinions and concerns of the profession regarding these changes.</p>
Recommendation/action required
Board is asked to NOTE the update and analysis provided.

Horizon Scan – October 2018

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.

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.

Issue	Impact	This will affect...	Timeframe	Likelihood (1-5)	Demand
Developments in transparency agenda arising from CMA report	High	Number of cost-related complaints referred to LeO, and contacts at front end	Dec 2018	5	↑
Updates on changes to the SRA Handbook	High	How we investigate certain regulated service providers	Nov 2018	4	→
Latest 'Bellwether report' released by LexisNexis	Medium	Targeting of our guidance to the profession	Sep 18 – Apr 19	3	n/a
Debate around Civil Liability Bill grows	Low	Composition of personal injury market	Mid-late 2019	2	↑
Greater pressure on law firms to report money laundering	Low	Reputation of UK legal services market	Ongoing	4	n/a
LASPO post-implementation review	Low	Access to justice, complaint volumes if policy change is recommended	2018/19	5	↑
CMC writes to Treasury Committee about 'inadequacy' of FOS review	Low	Perception and scrutiny of ombudsman schemes	Ongoing	3	n/a
Debate over future Bar training routes	Low	Professional standards, potentially number of complaints against barristers	Autumn 2018	4	↑
Devolved governments discuss access to justice and legal career pathways	Low	Access to justice in Wales, composition and numbers in the legal profession	Sep 2018	4	↑

Details

➤ *High impact*

Developments in transparency agenda arising from CMA report

Following recommendations from the CMA in its 2016 report on the legal services market, both the SRA and CLC have now had their respective transparency rules approved by the LSB. For both regulators, the rules are due to come into effect in December 2018.

Meanwhile, the BSB have just launched a [consultation](#) on their own transparency rules which would see public access barristers asked to publish a full range of costs information on their websites. Other requirements for all regulated by the BSB are set to include publishing information about factors which might influence the timescales of a case, details of complaints procedures, and a link LeO's ombudsman decision data.

The BSB conducted a limited pilot of their rules with nine different chambers earlier in the year, and this showed some positive impact on business. If approved by the LSB, the rules would come into force by May 2019.

LeO has considered its position on how we will treat information posted on websites during the course of our investigations. We will be releasing a short statement on our approach to this information alongside refreshed costs guidance later in the year.

Amidst all of this, comparison website ReviewSolicitors has received some trade media attention recently for a steady increase in usage since its creation in 2015. It intends to introduce new aspects to its ranking system which will take into account reviews, recommendations from clients, firm accreditation, Solicitors Disciplinary Tribunal rulings, and complaints upheld by LeO. An algorithm will create a result based on ratings in comparison with the size of the firm.

Updates on changes to the SRA Handbook

Proposed changes to the SRA Handbook which have been in train for the past few years are receiving attention once again. Following the LSB's decision to take more time to consider the application, it has been reported that they have received 'unprecedented lobbying' from the profession against the SRA's plans to allow solicitors to practise from unregulated businesses.

There have been around 128 submissions to the LSB on these proposals, most of which state opposition to the changes. A report by LexisNexis UK 2018 indicates that 57% of the 200 small and medium-sized firm respondents were 'simply unaware' of the proposed changes that are on the table. (*More on this report below*)

LeO is maintaining engagement with the SRA about these issues, and we are participating in a series of staff workshops to discuss challenges the innovations may present for our operations, and how to overcome or avoid these. It remains to be seen whether the LSB will approve the Handbook changes or not, although they will have to give an indication of the direction of their thinking by 5 November 2018.

➤ *Medium impact*

Latest 'Bellwether report' released by LexisNexis

Analytics company LexisNexis has just released the findings of their latest [Bellwether research](#) into attitudes of small independent law firms and sole practitioners to changes and

players in the legal services market. The report looks at a number of different matters, including awareness of and concerns about the forthcoming SRA Handbook changes, perception of the representation of their views by the Law Society/SRA/LeO/central government, and feelings about the status of the legal profession today and in the future.

The report flags up a major theme of isolation and disillusion amongst this section of the profession, and indicates that more targeted work towards them would be useful and well-received. While largely the report focuses on the role of the SRA and Law Society, there are still important lessons LeO can take away from the research.

➤ *Low impact*

Debate around Civil Liability Bill grows

The Civil Liability Bill, which would see changes made to the small claims limit among other reforms designed to shake up the current 'broken' system, has just had its Second Reading in the House of Commons. Marked party divisions are emerging during debates on the bill.

Meanwhile the CMC sector continues to develop:

- National Accident Helpline sees the changes in the Civil Liability Bill as an opportunity for business, even as the business reports falling profits. They are setting up bespoke law firm offerings to meet this need, as their overall profits fall this financial year.
- First4Lawyers has commissioned some market research which indicates that solicitors firms often delay getting back to mystery shoppers and don't attempt to 'add value' to personal injury claim cases.
- The FCA has released its consultation on certifying senior managers of CMCs after 1 April 2019, in which tougher measures are proposed for those seeking to open new businesses or take over existing ones.

These changes are interesting for us to note regarding the impact they might have on the existing personal injury market within legal services, and the potential for some CMCs to choose to be authorised by the SRA or others rather than the FCA.

Greater pressure on law firms to report money laundering

The National Crime Agency (NCA) has announced that the number of reports it receives from lawyers about money laundering has fallen by 10% this year, despite of a host of recent scandals that have led to London being described as 'the money-laundering capital of the world'. The NCA is working closely with the Solicitors Regulation Authority to identify legal professionals who are not following the rules.

This is interesting in the context of other current conversations about reporting misconduct in law firms, and the continuing push to highlight the UK's global reputation for legal services as we approach the Brexit deadline.

LASPO post-implementation review

The debate around legal aid and the state of the modern legal system in the UK continues to bubble away as MoJ undertakes its post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO). In a recent interview with *Legal Futures*, new Chair of the Legal Services Consumer Panel (LSCP) Sarah Chambers has stated that she is not afraid to make MoJ 'feel a little bit uncomfortable' on legal aid and maintains that the LSCP has more flexibility than the LSB in this area. Meanwhile LeO has

been asked to contribute data to the review of Part 2 of the Act, which relates to civil litigation funding and costs.

CMC writes to Treasury Committee about ‘inadequacy’ of FOS review

Largely, much of the media attention on the Financial Ombudsman Service (FOS) has subsided and parliamentary scrutiny of ombudsman schemes has similarly died down.

However in September, Director of Fairer PPI Stuart Bonnell [wrote to Nicky Morgan](#) MP, Chair of the Treasury Committee, claiming that Richard Lloyd’s review of FOS was not open enough and did not consider many criticisms against the service. Ms Morgan is yet to respond, and it is unclear whether this will spark any further action on the issue.

Debate over future Bar training routes

The Bar Council has recently published its [response](#) to a consultation issued by the Bar Standards Board (BSB) which proposes allowing easier access for solicitors and legal academics who wish to train as a barrister. The response sets out strong opposition to the change, on the basis that this would ‘unacceptably dilute the high standards rightly required of practising barristers’. Proposals include allowing solicitors with rights of audience to become authorised without completing a pupillage.

In addition, the BSB intends to continue delegating to individual Inns of Court the assessment of whether someone is ‘fit and proper’ to be called to the Bar. The LSCP has expressed concerns about this, stating that as a regulatory function, responsibility for this should lie with the BSB alone. It notes that the SRA carries out the ‘character and suitability’ assessment of persons applying to become solicitors.

The new rules will be finalised later this autumn and will come into effect next year. It is interesting to note these proposals alongside the introduction of the new Solicitors Qualifying Exam (SQE) which will be designed by training provider Kaplan and be introduced in 2020.

Devolved governments discuss access to justice and legal career pathways

In a recent question posed to the Counsel General for Wales, members of the National Assembly for Wales discussed current challenges and opportunities for administrative justice. In particular the conversation focused on reduced availability of legal aid, and the potential for a Welsh solution to ameliorate the consequences of this.

Meanwhile the Scottish Parliament’s Justice Committee is calling on schools, universities and the Law Society of Scotland (LSS) to consider what barriers exist to becoming a lawyer and to take action to remove them. The Committee has called for greater investment in legal apprenticeships, in an effort to ensure that able, ambitious people who do not fit into the traditional mould are not deterred. This aligns with the LSS’ involvement in the UK-wide Social Mobility Business Partnership which brings together law firms and legal regulators for a week-long work insight programme for students from disadvantaged backgrounds.

New appointments

None of note to report for this period. (1 September – 5 October)