

<i>Meeting</i>	OLC Board	<i>Agenda Item No.</i>	13
		<i>Paper No.</i>	104.11
<i>Date of meeting</i>	27 April 2020	<i>Time required</i>	10 Minutes

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

Executive summary
<p>The major changes in our external operating environment over this period are almost entirely related to the coronavirus pandemic. This report goes into some detail about the new approaches and debates that have arisen, to assist the OLC Board in understanding the context in which we must take our own decisions about future planning.</p> <p>Aside from this, issues of transparency are once again becoming prominent, and many developments point to a desire to reshape the way regulation of legal services operates in the UK in future. It will be important for the Board to consider where this organisation should sit within the sector in advance of any reforms being brought forward – while acknowledging the current challenges we face with wait times, like many other ombudsman schemes.</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 – April 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
Ongoing COVID-19 impacts and developments for legal services	High	Service levels in legal sector, timeliness of our investigations	5	Uncertain
Consumer Panel's latest Consumer Impact Report finds sector still lacking	Medium	Views on transparency within the sector	2	
CMA endorses changes to Scottish legal regulatory framework	Medium	Regulatory setups, potentially both in Scotland and E&W	4	n/a
First CMC to decide to come back to legal regulation	Medium	Complaint volumes, nature of service providers in our remit	4	
Renewed focus on lawtech initiatives from LSB and LSCP in context of lockdown	Medium	Service delivery in the sector; our approach to reasonable service	3	Uncertain
SRA to be established as distinct legal entity within Law Society Group	Low	Regulatory framework for legal services	3	n/a
Financial Ombudsman Service announces increased case fees alongside revised budget	Low	Planning for our own future budget process; views on ombudsman schemes	2	n/a
SRA publishes new corporate strategy for 2020-2023	Low	Stakeholder relationships; regulatory environment	3	n/a

Details

➤ *High impact*

Ongoing COVID-19 impacts and developments for legal services

As lockdown continues in the UK and uncertainty persists about how long it will last, organisations in the legal services sector are having to consider longer-term continuity planning. Over the past few weeks, there have been key decisions taken about qualification exams, approaches to regulatory enforcement, those falling under the ‘key worker’ scope, and funding support for law firms. Courts are moving swiftly to online hearings during this period, and a [rapid consultation](#) has been issued on remote family court proceedings. It is likely that even when lockdown is lifted, some of these new ways of working will remain (at least partially) in place.

Discussion of whether exams such as the Legal Practice Course (LPC), Professional Skills Course (PSC) and the Bar Professional Training Course (BPTC) will go ahead has consumed much of the legal press over the past month. In this time the SRA has taken an about-turn on the issue, initially postponing exams until the autumn—citing the difficulty in maintaining standards through online invigilation—but now inviting LPC providers to make alternative assessment arrangements. The BSB, which sets and marks the BPTC itself, has maintained its original position of cancelling April exams, with the next opportunity for budding barristers to take these being August of this year.

Meanwhile, a legal academic has called on the SRA to postpone introduction of the Solicitors Qualifying Exam (SQE) in light of the pandemic, suggesting that it would be ‘unreasonable and unnecessary to divert attention from the major challenges’ in order to respond to the application to the LSB which is expected this summer.

Those holding certain frontline roles in the justice system have now been formally defined as ‘key workers’ by the Ministry of Justice, and there is growing parliamentary interest in the measures being taken to support legal services and maintain access to justice at this time. Sir Robert Neill, Chair of the Justice Select Committee, has written to the Chancellor of the Exchequer in support of the Lord Chancellor’s bid to ‘secure necessary additional funding to ensure the viability of firms and individual practitioners’ over the crisis period.

It has been identified that legal aid firms in particular are in need of support, so proposals have been made to expand the scope for hardship payments in crown court cases and to pause some debt repayments to the Legal Aid Agency (LAA). Nevertheless, the Access to Justice Foundation has highlighted that ‘an already fragile’ legal advice sector is under immense strain at the moment, with up to half of all front-line agencies, including Law Centres, facing closure due to financial difficulties.

With regard to regulatory approaches, the SRA has issued guidance to the profession that it will be ‘pragmatic’ about enforcement during this time. While it emphasised that contingency plans should be made, it also recognised that these are exceptional circumstances for solicitors. It has confirmed that client care letters would not be compulsory for emergency wills made at this time, stating that client care information could be given verbally. However it stopped short of the BSB’s statement that following government public health guidance would not be considered a breach of its Handbook.

Meanwhile, the CLC is giving its members the option to defer paying their practice fee and compensation fund contributions for April–June, if they are in financial difficulty. It anticipates that for conveyancers, the short-term economic effects of COVID-19 will be particularly tough.

➤ *Medium impact*

Consumer Panel's latest Consumer Impact Report finds sector still lacking

In its first [Consumer Impact Report](#) since 2014, the Legal Services Consumer Panel (LSCP) has stated that while active engagement by consumers of legal services has increased and some progress has been made in price transparency, the same sector problems still largely persist six years on. These include poor access to justice for vulnerable consumers, lack of quality indicators in the sector, little consumer research, and a significant proportion of 'silent sufferers' not seeking redress when things go wrong.

The report uses the LSCP's own Tracker Survey and LeO's complaints data to monitor trends in the sector. It identifies costs as an ongoing area of difficulty for consumers, and praises the re-issue of our costs guidance. On transparency, the report notes that information on providers' performance is 'still limited and patchy across the sector' and difficult to compare across regulators. It notes that this would partly be improved by our publishing ombudsman decisions in full, which echoes the position set out in its recent response to our transparency paper. The report urges all regulators to come together and agree 'a common quality indicator framework' to assist consumers in making choices about their providers, as well as encouraging higher standards across the sector.

CMA endorses changes to Scottish legal regulatory framework

The Competition and Markets Authority (CMA) has now completed its review of Scottish legal services and [has made several proposals](#) to improve the framework of regulation for Scottish lawyers and the information available to consumers. Similarly to its findings in England & Wales (published in 2016), the CMA has highlighted that more needs to be done to improve transparency, especially of costs of legal services. It has therefore recommended that the Law Society of Scotland review whether mandatory rules on this –of the kind passed in the last year by regulators in England & Wales– would be appropriate.

Of greater significance, however, is that the CMA has given its support to the 'necessary' central recommendation of the Robertson Review, which was the creation of single regulator for all legal service providers. This was controversial when it was announced in October 2018, and little has happened to progress it since that time. The CMA contends that this, alongside complete separation of regulatory and representative functions, will increase trust in the sector. It has urged the Scottish Government to implement its recommendations quickly, but recognises that this may be challenging during the COVID-19 outbreak.

As developments in each of the legal jurisdictions tend to mirror each other, this could have very interesting knock-on effects for the MoJ's consideration of the regulatory framework in England & Wales going forward.

First CMC to decide to come back to legal regulation

During the transfer of regulation of claims management companies (CMCs) from the MoJ to the Financial Conduct Authority (FCA), one of the major discussions centred on the potential for CMCs to avoid FCA regulation by remaking themselves as ABS entities and seeking authorisation from a legal service regulator. At the time it was unclear whether this would be a popular option for CMCs, but experience since then has shown that largely it has not been.

However, National Accident Helpline recently announced that it will be moving its regulation from the FCA to the SRA, in order to process small claims 'far more efficiently'. It sees this as particularly necessary with reforms in the Civil Liability Act 2018 coming into force. This will mean that the CMC will once again fall into our jurisdiction; it remains to be seen if others then seek to follow suit.

Renewed focus on lawtech initiatives from LSB and LSCP in context of lockdown

In the first week of April, the Legal Services Board (LSB) published a [collection of articles](#) written by various main players in legal services regulation on the topic of legal technology. Each of these explore differing perspectives on lawtech and its potential for increasing access to justice. The LSB indicates that this is particularly in the context of restrictions brought on by the coronavirus pandemic, when many in the justice and legal services sector are having to find innovative ways to keep service provision going at a distance.

Responding to the publication, the LSCP has published an article of its own, urging regulators to address lawtech 'proactively instead of being reliant on a reactive, fire-fighting approach'. It presses for a flexible and collaborative approach to be taken, with consumer interests at its heart, so that AI-led legal services retain public confidence. This call for a united effort is echoed by the LSB, which has announced plans to set up an 'expert reference group' to allow for knowledge-sharing. It may be very useful for LeO to ensure it has a place in these conversations, as we too will need to begin defining our view on reasonable service where lawtech has played a role in delivery.

➤ *Low impact*

SRA to be established as 'distinct legal entity within Law Society Group'

Last year, the LSB chose to tighten up the internal governance rules that mandate the relationship between regulators and representative bodies in the legal services sector. In response to this, the respective heads of The Law Society and the SRA have recently issued a [joint statement](#) announcing that the SRA will be made into a distinct legal entity by this summer. This is the culmination of years of disputes between the two organisations – although it still does not amount to complete legal separation, which would require changes to the Legal Services Act 2007.

The justification for the move is to create a more effective and transparent arrangement. However there is little further detail to the statement, leaving funding and the future legal status of the SRA in some doubt. It will be interesting to see how this might align with Professor Mayson's final report on the legal regulatory framework, which was originally due to be published in March 2020, and has now been postponed until June of this year.

Financial Ombudsman Service announces increased case fees within revised budget

At the beginning of April, the Financial Ombudsman Service published its [budget for 2020/21](#) which has been modified in recognition of the challenges presented by COVID-19. In light of the 'unprecedented impact on firms' the organisation chose to adapt its overall income to a 70:30 split between case fees and the levy. It had previously settled on a 60:40 divide, following negative feedback from the sector on its original proposal to shift to a 50:50 funding model. The modification to the budget will save service providers just over £25m this year, although the Financial Ombudsman will also be increasing its case fee from £550 to £650.

Alongside this, its business plan sets out an ambitious target of reducing wait times to a maximum of four weeks over the next year. However, this is accompanied with a warning that COVID-19 is

likely to make recruitment more difficult, which it sees as 'fundamental' to achieving this aim. This appears to be a very similar situation to our own, and it may be that we can take learning from the Financial Ombudsman's approach to these challenging circumstances.

Other ombudsman schemes, including the Local Government and Social Care Ombudsman, Parliamentary and Health Service Ombudsman and Pensions Ombudsman, have made the decision to stop accepting new complaints. This is largely in recognition of the extra strain on bodies in their jurisdiction at this time.

SRA publishes new corporate strategy for 2020-2023

The Solicitors Regulation Authority (SRA) has published the final version of its [new corporate strategy](#), and has confirmed that it will proceed with the strategic objectives it consulted on in October-January of last financial year. Largely the strategy remains as it was before, although there are some changes to the detail under each objective, including sharpening the focus on building new stakeholder relationships and considering environmental sustainability. The SRA has indicated that it will also consult on its business plan later this year, which will be the first time the organisation has done so.

Meanwhile, the LSB has published its 'flexible' [business plan for 2020/21](#) in recognition of the uncertainties brought on by the COVID-19 pandemic. It has also set out a commitment to 'playing a role in supporting [the] recovery' of the legal services sector from the effects of the pandemic. This is the last year of its current strategy, and it has already started work on engagement with stakeholders for the development of its 2021-24 strategy, which is set to be much broader in scope.

Appointments, departures and awards

OLC: Elisabeth Davies appointed as Chair for a three-year term initially, commencing 1 April 2020. Elisabeth was Chair of the Legal Services Consumer Panel from 2011 to 2016, and was appointed as a member of the Civil Justice Council in January 2019. She is also an Advisory Panel Member of Professor Stephen Mayson's Independent Review of Legal Services Regulation.

UK Civil Service: Chief Executive and Cabinet Office Permanent Secretary, Sir John Manzoni, steps down after six years in post. He will stay on as an adviser to provide support where needed. The position of Cabinet Office Permanent Secretary has now been filled by **Alex Chisholm**, although he will take the title of Chief Operating Officer of the civil service. He moves from the Department for Business, Energy and Industrial Strategy (BEIS).