

Meeting	OLC Board Meeting	Agenda Item No. Paper No.	For information 133.5
Date of meeting	13 June 2024	Time required	N/A

Title	Horizon Scan – June 2024		
Sponsor	Stephanie Godbold – Head of Communications, Engagement and Impact		
Status	OFFICIAL		

Executive summary	
The Board are asked to note the contents of the horizon scanning paper.	
Recommendation / action required	
Board is asked to note the update and analysis provided.	
Equality Diversity and Inclusion	
EDI implications	Yes
N/A	
Freedom of Information Act 2000 (Fol)	
Paragraph reference	Fol exemption and summary
N/A	N/A

Horizon Scan – June 2024

1. Overview

Issue	Impact	This will affect...	Demand
General election impact	Low	Bills and Committee inquiries	↔
Digital Markets, Competition and Consumers Act 2024	Medium	Requirements on the organisation as an ADR provider	↔
CMA guidance unregulated sector	Low	Unregulated will-writing, probate services and online divorce providers	↔
Consideration of mandatory mediation for higher-value court cases	Low	Potential for more people to be referred to an ombudsman or mediation service	↔
Justice Select Committee – Alex Chalk MP response	Low	Future of the Legal Services Act	↔
First tier complaints increase in SRA regulated firms	Low	LeO's impact work, as outlined in the 2024-27 Strategy	↔
Axiom Ince report delayed	Low	Clients affected by Axiom's closure	↔

2. Thematic issues and news

General Election – 4 July 2024

The Prime Ministers announcement that a general election will be held on 4 July has impacted a number of bills that were currently going through Parliament. The “wash-up” period has seen a number of bills rushed through – including the Digital Markets, Competition and Consumers Bill- however, a number have also been abandoned.

Bills that have passed include:

- Leasehold and Freehold Bill
- Post Office (Horizon System) offence Bill
- Victims and Prisoners Bill
- Finance Bill
- Media Bill

Bills that have been abandoned include:

- Renters Reform Bill
- Criminal Justice Bill
- Football Governance Bill

The work of the Commons Select Committees, including the Justice Select Committee have also ended. This includes the inquiry into the delays in probate services and the home buying and selling inquiry.

The early conclusion of the probate inquiry has seen the Chair, Sir Bob Neill, call for the Probate Service to share more data about its performance so that lawyers can manage client expectations.

The home buying and selling inquiry was also calling for the mandating of upfront information in the home buying and selling process to help speed up processes and reduce the risk of sales falling through.

Digital Markets, Competition and Consumers Act 2024

The Digital Markets, Competition and Consumers Act received Royal Assent on 24 May 2024.

The introduction of the Act means that alternative dispute resolution (ADR) (defined as “*out of court resolution of a consumer contract dispute...carried out by an independent third party acting in relation to both parties to the dispute*”) can only be carried out by an accredited ADR provider or an exempt ADR provider. To encourage ADR and maximise consumer confidence in the process, the Bill has introduced limitations on who can provide ADR services, and the level of accreditation needed to do so.

To maximise consumer confidence in these processes, under the act, ADR providers will only be able to work in relation to a consumer contract dispute if they are:

- One of the twelve listed ‘exempt providers’ (of which the Legal Ombudsman is listed)
- An ‘accredited provider’ – the Secretary of State will determine the procedure to be followed for applications for accreditation
- Acting under special ADR arrangements that are made by an exempt or accredited provider

One of the key provisions under the Act is reporting. The Act stipulates that the Secretary of State can require an exempt or accredited provider to provide “*ADR information*” to the Secretary of State (or other body to whom reporting has been delegated by the Secretary of State). ADR information relates to any information about the ADR provider, or the ADR carried out by the provider.

LeO is working to understand the full context of the reporting requirements that may be required and whether the current reporting is sufficient for the purposes outlined in the Act. Following LSB approval of the Business Plan and Budget in March 2024, the LSB Chair wrote to the OLC Chair setting out the LSB’s areas of focus and interest in respect of LeO going forward, which also included the consideration of a trajectory for LeO applying to become an ADR entity as set out in the ADR for Consumer Disputes (Competent Authorities and Information) Regulations 2015. LeO’s Executive colleagues are taking these discussions forward and will keep Board members updated on progress.

CMA guidance to unregulated legal services sector

In July 2023, the CMA began an investigation into unregulated will writing, online divorce and pre-paid probate services, having identified them as areas of concern involving potential risk to customers and possible breaches of consumer protection law.

The CMA have been examining compliance with current UK consumer protection law and, where they feel there are areas of potential non-compliance, to consider what the CMA can do to improve the situation.

Using evidence gathered from businesses, consumers, and stakeholders, they have identified some areas of concern and are looking to address these. As a first step, they have produced a draft guidance document which sets out the requirements of consumer law and provides some practical 'do and don't' checklists and case study examples to illustrate the types of issue and potential consumer law breaches that have been identified. A consultation on the draft guidance is open until 13 June. After the final guidance is issued, the CMA intends to conduct a compliance review to assess compliance levels across the sector. If the review shows that concerns remain, the CMA will consider whether enforcement action may be necessary to raise compliance levels and protect consumers.

LeO is intending to submit a response to the consultation to provide context and do so through the lens of the regulated service provider complaints we see in relation to will-writing, divorce and probate cases.

Consideration of mandatory mediation for higher-value court cases

From 22 May 2024, free mandatory mediation now applies to most money disputes valued at up to £10,000 made on paper and through HMCTS online systems.

The small claims mediation service has been available as an option since 2007. However, last year the Ministry of Justice confirmed that mediation will become compulsory for cases allocated to the small claims track valued at up to £10,000, issued under Part 7 of the Civil Procedure Rules. The Court of Appeal also handed down its judgment in *Churchill v Merthyr Tydfil County Borough Council* (November 2023), which found that judges can lawfully stay proceedings for parties to engage in non-court-based dispute resolution, provided the power is exercised in a way that does not impair the claimants right to a fair trial.

The government's future plans are to integrate mediation within the resolution of higher value claims in the County Court.

As with mediation for the smaller claims, the MoJ are keen that Ombudsman services are used where available. There have been previous discussions about wanting to work with Ombudsmen to raise profile of Ombudsman services, such as via Gov.UK pages for signposting. Once clients go to court for small claims, the court is more likely to refer to a small claims mediation service – but Ombudsman services will never be excluded, and clients can drop out of legal process as they wish.

Justice Select Committee- LSA response from Alex Chalk

In the last horizon scan update, information was provided on the Justice Select Committee's letter to Alex Chalk MP in relation to the future of the Legal Services Act.

Alex Chalk responded to the letter by saying he recognised that there is a growing case for a review of the act and had asked officials to consider when the appropriate time to conduct a thorough review of the act might be. It should be noted, however, that the letter sent to the Justice Select Committee in response to their recommendations was published before the general election was called.

LeO will continue to monitor any developments in relation to a review of the Legal Services Act, however, given the general election, it may be unlikely that any new Government would be in a position to prioritise a review in the short term.

First-tier complaints increases in SRA regulated firms

The SRA has published its latest report into the number of first tier complaints dealt with by firms they regulate. The report has found that the number of complaints received by law firms has gone up by nearly a fifth between 2019 and 2023.

Small, medium, and large firms receive proportionally more first-tier complaints compared to their volume of work. The review found that the number of first tier complaints stood at 36,887 in 2023, which is nearly 10% higher than in 2022 and just under 20% more than the pre-Covid level in 2019.

Other key findings include:

- There are some differences according to the size of the firm. Medium-sized and large law firms resolved 79% of FTCs, with small firms resolving 68%. The review said the weaker performance of small firms was “likely to be because larger firms have dedicated resources to handle complaints”.
- The most common reasons for complaints were delay (20%), followed by failure to keep informed (17%), failure to progress, failure to advise and excessive costs- all very similar to LeO’s complaint reasons.

The findings of the review align with the demand and make up of complaints that LeO is continuing to see. Work is ongoing to work alongside regulators and the LSB to improve first-tier complaint handling and the evidence published by the SRA allows a greater understanding of the scale and type of complaints that are being reported to law firms.

The full review can be found [here](#).

Axiom Ince report and SSB update

The Legal Services Board has confirmed that publication of its report into the independent review of regulatory events leading up to the SRA’s intervention into Axiom Ince will be delayed until after the General Election on 4 July. This is to comply with the pre-election guidance.

LeO is continuing to engage with the SRA in relation to the impact of the investigation on customers who have a service complaint about Axiom Ince.

The outcomes of the SRA’s own investigation into Axiom Ince, and similarly SSB Law, are ongoing and will have an impact on LeO’s approach to resolving complaints about both firms. Until the outcome of those investigations is known, LeO is unable to progress these cases and has therefore paused investigations. Communication with those affected is ongoing and updates will be provided when more information is known.

LeO has also continued to liaise with the SRA about SSB Law and communication to affected clients. A further update has been published on the SRA’s website:

<https://www.sra.org.uk/sra/news/ssb-group/>.

Consultation responses and publications

Law Society – 21st Century Justice Project

In May the Law Society published its recommendations from the 21st Century Justice Project. The project was launched in 2023 and aims to work in collaboration with a number

of cross sector organisations to develop policy proposals that increase access to justice for small business and individuals on low incomes. The [project's interim report has now been published](#) and lists “actionable simple ways” to future-proof the justice system in seven key areas of civil law.

Recommendations in relation to promoting reform of the ombudsman sector includes ensuring better and more consistent compliance with decisions, strengthening enforcement powers, improved collaboration between the courts and Ombudsman schemes. Significantly it also recommends Ombudsman schemes have the power to undertake own-initiative 'systemic' investigations and to set complaints standards for providers within their remits..

The last point (complaints standards) is something LeO has also referenced as part of the LSB's first tier complaints project and will therefore continue to monitor the progress of the Law Society's work, actively engaging wherever possible, to ensure strategic alignment with other projects in the sector seeking to improve the impact of ombudsman decision making.

The Law Society's wider plan of action includes:

- making the case for a publicly-funded online information and guidance tool to help individuals and small businesses identify the nature of their legal issue and triage them to appropriate dispute resolution
- commissioning new research to explore how international models of delivering civil legal aid could work in England and Wales
- convening a cross-industry working group of insurers, solicitors and consumer groups to make legal expenses insurance work better for existing policy holders
- refreshing support and guidance to members offering unbundled legal services, working with regulators and insurers to explore ways to reduce risk and expand insurance cover
- promoting reform of the ombudsman sector as a key part of the dispute resolution landscape, and calling for the Ministry of Justice to take the lead on ombudsman policy
- improving support for small businesses to resolve disputes
- considering what is needed to protect consumers from the risks of using AI in a justice context, including case predictive analytics as well as generative AI tools.

3. Announcements and appointments

New Chief Executive of the Legal Services Board

The Legal Services Board have announced the appointment of Craig Westwood as its new Chief Executive Officer. Craig will join the LSB on the 19 August, from the Electoral Commission, where he is currently Director of Communications, Policy and Research.