

CEO report - Annex A - Horizon scanning report

(Covers the period 10 September to 12 October 2018)

The top five

The Bar Standards Board is consulting on detailed proposals to improve consumer transparency. The proposals would require barristers operating in several areas of public access work to provide a price indication online. Chambers, entities and sole practitioners would otherwise not have to publish prices, but chambers' websites would need to tell clients that they may contact the set for a quote. Other requirements are set to include publishing information about the factors which might influence the timescales of a case, details of complaints procedures, and a link to the Legal Ombudsman's website, allowing consumers to see which barristers received an ombudsman's decision in the previous calendar year. Meanwhile the SRA and CLC have both published guidance for law firms on new transparency requirements, which will come into force on 6 December.

The Ministry of Justice has published a **technical notice about its plans for professional services should the UK leave the EU in the event of a no deal.** This includes no system of reciprocal recognition of professional qualifications nor current reciprocal arrangements under which EEA lawyers can provide services and establish on a permanent basis. However, in both cases the government said it would work with regulators to ensure that professionals arriving in the UK from the EEA after the exit date will have a means to seek recognition of their qualifications. [A fuller note on the technical notice is appended separately to the CEOs report.]

The Solicitors Regulation Authority (SRA) has won a £700,000 award from the Regulator's Pioneer Fund to support and accelerate the ideas of law firms and others to improve access to justice using artificial intelligence (AI). The SRA is working in partnership with Nesta's Challenge Prize Centre. The new 'SRA Innovate Testbed' will be an open innovation competition "to seek out and accelerate ethical AI-powered legal services".

The SDT has been receiving responses to its consultation on standard of proof. As expected, the SRA and LSCP have advocated a move to the civil standard. The SRA has also suggested that tribunals should be constituted with lay majorities, echoed by the LSCP. It also suggested a rule that prevents solicitors before the tribunal questioning alleged victims directly in harassment cases. As anticipated, the Law Society opposed the move, claiming that the SRA has the highest prosecution success rate of any regulator.

The SRA has seen a sudden rush in reports of sexual harassment and improper use of non-disclosure agreements (NDAs). It said it was now dealing with over 50 ongoing cases following greater publicity around the issue and the warning notice it issued in March. The BSB has also seen an increase in bullying and harassment cases and will be issuing guidance later this month as part of its response to this issue. The Law Society announced it will develop guidance for solicitors and clients on NDAs. The activity follows a call by the House of Commons' women and equalities committee in July for legal regulators to show that lawyers will face "serious sanctions" if they sexually harass clients or colleagues or misuse NDAs to silence victims of sexual harassment.

Political developments affecting the justice sector

The Ministry of Justice is consulting on introducing ‘no-fault’ divorce. Under current law in England and Wales, couples must either live apart for a substantial period of time before they may divorce, or else they must make allegations about their spouse’s conduct. The Law Society welcomed the news.

The Chair of the Criminal Bar Association has said the **MoJ’s £15m ‘promise’ to end industrial action was not good enough and trust was ‘hanging by a thread’**. The MoJ has been forced to extend its consultation period on the new advocates’ graduated fee scheme after it published previously delayed modelling data showing that the fee increases being consulted on would only deliver an £8.6m increase to the 2017/18 budget.

Support for victims of crime will be overhauled following the launch of the first ever cross-government Victims Strategy. The strategy sets out how the government will consult on a revised Victims’ Code and a Victims’ Law to underpin the code, which will include strengthening the Victims’ Commissioner’s powers. The strategy commits to a review of the entire Criminal Injuries Compensation Scheme, while communication and support for victims during the parole process will be improved. Consultations will begin in early 2019.

The Senior Salaries Review Body (SSRB) has recommended a 32% pay rise for high court judges. If ministers agree to the change, salaries should increase by almost £60,000 a year. Low morale, long hours and changes to their pension schemes are said to have led to a recruitment crisis in the judiciary.

The Ministry of Justice has published a **technical notice about its plans for civil judicial cooperation should the UK leave the EU in the event of a no deal**. Should a no deal transpire, UK would repeal most of the existing civil judicial cooperation rules and follow domestic rules currently applied to non-EU countries. Existing international agreements, such as the Hague Conventions, would continue to apply, though the ministry says they are not always as comprehensive. Most cases ongoing on exit day will continue under the current rules, but there is no guarantee that EU courts will follow the same principle, nor that EU courts will accept or recognise any judgments stemming from these cases.

The Ministry of Justice has published **technical notices about its plans on intellectual property should the UK leave the EU in the event of a no deal**. The notices cover the government’s plans for continued recognition of existing rights in the UK by recreating protections in UK law. This applies both to registered and unregistered rights. They also cover wider mechanisms and arrangements relating to IP, such as cross-border copyright and exhaustion. For these mechanisms and arrangements, the government intends to provide continuity where possible.

The Ministry of Justice is working with the SRA to build greater trust in solicitors among black and minority ethnic (BAME) people in custody. The move forms part of the government’s response to the Lammy review of the treatment of BAME people in the criminal justice system. The government’s update makes no mention of giving a choice of duty solicitor to defendants despite this being one of David Lammy’s recommendations.

An independent review of competition in the digital economy set up by BEIS, DCMS and HM Treasury has begun work. The review will investigate how the UK’s competition regime in the context of the digital economy affects consumers, and the impact of competition policy on the UK’s growth, productivity, wages and labour markets. An expert panel led by Harvard Professor Jason Furman (and including former LSCP member Philip Marsden) will run to early 2019 and culminate in a report to government.

The Consumer Minister has launched a Smart Data Review aimed at making it easier for consumers to get good deals on essential services like broadband and banking, and put an end to consumers paying unjustifiable 'loyalty penalties'. Meanwhile, Citizens Advice has made a formal 'super-complaint' to the CMA about loyalty penalties based on evidence that people who stay with their provider - often on default or roll over contracts - can end up paying significantly more than new customers. Under the super-complaint process the CMA has an initial 90 day period to publish a response.

The Small Business Minister has launched a call for evidence on late payments to small businesses by large companies. Nearly a quarter of UK businesses report that late payments are a threat to their survival. The LSB's small business legal needs research has identified late payments as one of the most common causes of legal issues.

Regulatory and wider policy developments

The Equality and Human Rights Commission has started a statutory inquiry under the Equality Act 2006 into legal aid provision for victims of discrimination in England and Wales. It will examine such things as possible barriers to legal aid for discrimination cases and the mandatory telephone gateway as the access point for most advice on the subject. The EHRC has also published research by Liverpool University showing the consequences of a reduction in legal aid, including debt from high lawyers' fees, possible ill-informed judicial decisions, and knock-on costs for other parts of the public sector.

The International Bar Association unveiled a world-first civil legal aid blueprint. The blueprint contains 27 principles under the headings of funding, scope and eligibility, administration and provision. The document emphasises that legal aid service delivery generates significant social and economic benefits. Lucy Scott-Moncrief, former president of the Law Society, made the announcement at the IBA's annual conference in Rome.

The Legal Ombudsman has urged law firms that use web-based email such as Yahoo, AOL and Hotmail to invest in a more secure corporate email solution or risk paying out to victims of cybercrime. In new guidance LeO highlighted this as a factor it would consider when considering complaints by clients who have been the victims of cybercrime.

The BSB's annual enforcement report shows the number of complaints about barristers increased 29% on last year, although fewer were referred to disciplinary action. The number of disbarred barristers fell from 20 to six. Reports of sexual harassment by barristers increased from none in 2016-17 to eight in 2017-18. The BSB chair said she is considering setting targets for the time taken to conclude disciplinary proceedings after the time taken to conclude disciplinary cases this year increased by nearly three months. Meanwhile, the Bar Council is to publish new guidance on dealing with sexual harassment.

The Bar Council has criticised BSB proposals that it says would automatically 'passport' solicitors with rights of audience and academics through qualification as barristers. The Bar Council argued that the proposals would dilute the barrister brand since solicitors face 'markedly less strict training requirements', such as pupillage. The proposals on new rules for its training framework are part of the BSB's Future Bar Training project.

The LSCP has urged the BSB to take control from the Inns of Court of deciding whether someone is 'fit and proper' to be called to the Bar. The Panel said this was a regulatory function and noted that the SRA carried out the equivalent test for solicitors.

Earlier in the year the BSB said it would maintain the existing position but would also require a standard Disclosure and Barring Service check at the point of call.

Professor Stephen Mayson has announced the members of the advisory team that will support his review of legal services regulation. These include Elisabeth Davies (former LSCP chair), Patricia Robertson QC (former vice chair of the BSB), Dominic Grieve (former attorney general) and Lord Neuberger (former President of the Supreme Court). He has also published three working papers: an assessment of the current regulatory framework; the rationale for legal services regulation; and another on the scope of legal services regulation.

The Supreme Court is to review what needs to be proved when a solicitor is sued for failing to advise a client of a potential claim, in a case which could **change the courts' approach to dealing with claims over negligently conducted litigation.** In *Perry v Raleys* (the defunct law firm that acted for thousands of miners) the Court of Appeal overturned a lower-court ruling that Raleys should not have to compensate a miner who argued that its admitted negligence had caused him to settle a claim at an undervalue.

Market developments

ReviewSolicitors.co.uk, a website allowing clients to rate their solicitors, has announced plans to rank firms as the best in their area. Criteria affecting the overall ranking include reviews, firm accreditations and recommendations from clients. Scores will be negatively affected by adverse Legal Ombudsman or Solicitors Disciplinary Tribunal rulings and negative reviews. Having started in 2015 there are now around 800 firms actively collecting reviews through the site, with two million visitors over the past 12 months.

Lexoo, an online lawyer-matching business targeted at companies, has secured £3.4m in its latest funding round. Lexoo allows in-house lawyers to identify boutique firms from its network. Clients compare and hire lawyers who bid on a fixed-fee basis for their work. The site now has over 800 vetted lawyers on its marketplace. Lexoo plans to use the funding to expand its headcount and invest in new technology, including automated contract drafting and project management tools to further increase efficiencies of its lawyers.

The Co-op has declared itself the largest provider of probate services in the UK as its financials continue to improve. The group's interim results today show that revenues at Co-operative Legal Services (CLS) in the first half of 2018 jumped 31% to £16.1m, compared to £12.3m in the same period last year – which was itself a significant improvement on the year before. Earlier this year, the Co-op acquired Simplify Probate, the UK's second largest provider of probate, whose 170 staff took the total staff number at CLS to just over 600.

Vannin Capital, a litigation funder formed in 2010, has outlined plans for a £70m listing on the London Stock Exchange's main market in October. The development provides further evidence of a booming market for dispute funders. Fast-growing rival Burford is already listed and other dispute funders have expressed interest in an IPO.

Gordon Dadds Group is in talks with top-50 City firm Ince & Co to create what would be the **largest listed law firm.** The combined turnover of the two companies last year was about £125m. Gordon Dadds has completed five acquisitions since listing in August 2017.

The top 100 law firms billed a record-breaking £24.1 billion last year – an annual rise of nearly 10%. Profits at many of law firms were also up, with nine practices recording average drawings for top equity partners of more than £1 million.

UnitedLex, a global 'enterprise legal services company' that effectively owns City-based law firm Marshall Denning, is set for massive growth after **Europe's biggest private equity house took a majority stake**. CVC Capital Partners is set to make \$500m available for investment. UnitedLex praised the SRA as the "most progressive regulatory body in the world and why we see the UK as an important base" for international expansion.

Twelve of the world's top law firms, including Clifford Chance (CC), Linklaters and Freshfields Bruckhaus Deringer, have **joined a consortium to support a legal tech startup which has created a platform to allow firms to more quickly deploy legal tech tools** such as contract analysis, discovery and practice management. The new venture, called Reynen Court, is akin to creating an App Store that will allow law firms to quickly and more securely fire up third-party software.

Josh Browder, the British student entrepreneur who created the ground-breaking **DoNotPay chatbot** – initially to challenge parking tickets in the US and UK – has launched it as an app with 15 different services. The launch, initially in the US market, includes free services for issuing small claims, obtaining refunds from Uber drivers making a wrong turn and joining class action settlements based on checking receipts in emails.

Market intelligence and research

The SRA has published research indicating that price transparency will encourage small businesses to use solicitors. The research found that solicitors were perceived as being expensive, both in absolute terms and relative to other service providers, with 60% of those polled saying the perception of cost was a barrier to seeking legal advice. A lack of readily available price information, and the complexity of information currently available, were also significant factors. More than 50% of small businesses stated that they would be more inclined to contact a solicitor who published price information on their website.

The International Bar Association has launched a global survey on bullying and harassment in the legal profession. Preliminary results indicate that half of all women lawyers have been bullied at work and one in three has been sexually harassed. One in three male lawyers reports having been bullied, while one in 15 has been sexually harassed. Yet in four out of five cases the harassment was never reported, for reasons including fear of career damage and reprisals.

A new study on social mobility in law, backed by eight top law firms, has found that many junior lawyers from lower socioeconomic backgrounds are being held back from progressing – despite being better performers – due in part to the "micro-aggressions" they face on a daily basis. Micro-aggressions are defined as "everyday words or acts that communicate denigrating messages to certain groups who are perceived as different, for example by gender, ethnicity, and/or socioeconomic background".

An independent evaluation of an online video hearing pilot run by HMCTS has found it was beset by technical failures, ended up much smaller than envisaged, and warned that the participants could be "self-selecting". The evaluation, by academics at the LSE, tested user experiences in a small number of party-to-state hearings in the First-tier Tribunal (Tax Chamber). However, as far as it went, the evaluation reported high levels of user satisfaction with the trial, mainly due to the convenience of not having to travel to a physical hearing.

The Law Society's annual survey of the professional indemnity insurance market found that small law firms are increasingly being targeted by cyber-criminals, but very few

attacks are actually succeeding. The broader picture of the 2017 renewal round was that although actual premiums fell for firms of up to four partners, their cost as a percentage of turnover across all categories of firms went up. The Law Society said that the insurance market was hardening and that premiums were likely to increase next year.

Research on technology and the in-house legal function published by LexisNexis

found that three quarters of in-house counsel expect firms to cut their bills by adopting new technologies – but more than a third do not know what technology their panel firms are using. There was mixed feedback on the satisfaction of legal technology deployed by firms: 40% of GC's said they were satisfied, 12% very satisfied and 37% were dissatisfied.

The Professional Standards Authority has published a collection of papers on right-touch regulation.

Ten contributors (including from organisations in Australia, Canada, Ireland and New Zealand, as well as the UK) share their experiences of using right-touch regulation to inform their thinking, policies and practice. A common theme in the papers is that right-touch regulation is an adaptable approach, flexible enough to be useful in different regulatory regimes, and clear enough to provide a consistent framework for problem-solving. The authors show that right-touch regulation is complementary to other values-based approaches, and that it can act as a catalyst for organisational change within regulators.

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Market intelligence and research
CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS

Indicator of success	Source	2012	2013	2014	2015	2016	2017	2018
<i>Promoting the public interest through ensuring independent, effective and proportionate regulation</i>								
LSB expenditure	LSB	£4,578k	£4,264k	£4,266k	£3,921k	£3,587k	£3,525k	£3,470
LSB levy per authorised person	LSB	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83	£19.00
Public trust lawyers to tell the truth [○]	LSCP	43% ^A	42%	43%	47% ^A	42% ^A	45%	45%
Public confident consumer rights protected [○]	LSCP	49%	46%	46%	50% ^A	46% ^A	48%	49%
<i>Making it easier for all consumers to access the services they need and get redress</i>								
No action when have legal issue: Individuals [○]	LSB	15%	14%	13%	14%			
Levels of shopping around: Individuals [○]	LSCP	22%	22%	24%	25%	25%	27% ^B	27%
Use of comparison/feedback sites: Individuals [○]	LSCP	1%	1%	1%	2%	2%	2% ^B	2%B
Ease of shopping around: Individuals [○]	LSCP	57%	55%	54%	57%	57%	47% ^B	58%A
Overall service satisfaction: Individuals [○]	LSCP	79%	80%	79%	78%	80%	80%	84% A,B
Providers publish prices on websites [○]	LSB					18%	18%	
Consumers who do nothing when dissatisfied [○]	LSCP	42%	44%	44%	42%	35%	49% ^A	35%A,B
Public confidence in complaining about lawyers [○]	LSCP	49%	44% ^A	45%	48%	43% ^A	44%	45% B
No action when have legal issue: SMEs [○]	LSB		8%		9%		10% ^B	
Levels of shopping around: SMEs [○]	LSB						22%	
Ease of finding provider: SMEs [○]	LSB				25%		50%	
Lawyers perceived as cost-effective: SMEs [○]	LSB		12%		14%		11% ^A	
<i>Increasing innovation, growth and the diversity of services and providers</i>								
UK wide legal services turnover (uninflated)	ONS	£27.2bn	£29.3bn	£30.5bn	£32.3bn	£31.8bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	
Level of service innovation (over 3yrs) [○]	LSB				28%			26%
Regulation seen as barrier to service innovation [○]	LSB				50%			40% A,B
Firms state reduced prices in last 12 months [○]	LSB					4%	4%	
Net exports of UK legal services	ONS	£3.1bn	£3.4bn	£3.8bn	£4.4bn	£4.0bn		
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%

KEY: [○] = Survey source, ^A = Significant differences to previous figure, ^B = Significant differences between oldest and newest figure