

Horizon scanning report

(Covers the period 3 September to 10 October 2019)

The top five

The Lord Chancellor intervened to remind politicians about importance of the rule of law following comments that legislation designed to stop a no-deal Brexit might be ignored. The QC leading the petition against prorogation in the Scottish courts suggested that regulators should take an interest where lawyer politicians say or do things that appear to be incompatible with the rule of law. The legal challenge to the decision to prorogue parliament has also led to public debate about the independence of the judiciary.

The SRA is consulting on a new draft corporate strategy 2020-23. It signals an intention to become a more agile regulator with the confidence to contribute to the wider policy debates on access to justice and speak out on the limitations of the Legal Services Act. There are three high-level objectives: “We will set and maintain high professional standards for solicitors and law firms as the public would expect and ensure we provide an equally high level of operational service; we will actively support the adoption of legal technology and other innovation that helps to meet the needs of the public, business community, regulated entities and the economy; and we will continually build our understanding of emerging opportunities and challenges for the legal sector and our role in effectively regulating it. *(Separate note on this has been circulated)*

The Law Society Annual Statistics Report showed a 2.5% growth in the number of solicitors with practising certificates, to 143,167. There was a 3.8% increase in total individuals on the Roll (to 188,868). More than half (50.8%) of the profession are now women and in 2017-18, 62 per cent of admissions were female. Ethnic diversity among solicitors increased by 2.1% in the last year – with almost one sixth of solicitors (16.9%) now coming from Black, Asian, and minority ethnic (BAME) backgrounds. However, progression to senior levels of the profession remains the key issue. For example, more than 40% of male solicitors in private practice are partners, compared to less than 20 per cent of women.

The Legal Ombudsman has published a discussion paper on the complaints information it makes available. Options include publishing its full decisions, as well as annual reviews of the most complained-about lawyers and firms. Longer term, it also wants to publish details of complaints that it resolves short of a formal ombudsman decision, but says this would legislative change. The paper is a contribution to the push for greater transparency started by the CMA’s legal services market study.

Amazon has made its first foray into the legal services market. It has launched a “curated network” of intellectual property (IP) law firms to provide trade mark registration services to SMEs, which it plans to roll out internationally. The 11 law firms that form part of the IP Accelerator are there to help brands more quickly obtain IP rights and brand protection in Amazon’s stores. Amazon has vetted the participating IP law firms for experience, expertise and customer service, and all have agreed to pre-negotiated rates for the standard services involved in obtaining a trademark registration.

Political developments affecting the justice sector

At its annual conference, **the Labour Party pledged £74m on free legal training for 200 community lawyers, new law centres and to reverse cuts to legal-aid funded Early Help.** The shadow justice secretary also announced that a constitutional convention would look at how to give every citizen a constitutional 'right to justice'.

The Commission on Justice in Wales has published an early recommendation for the establishment of a Law Council for Wales to promote the interests of legal education and the awareness of Welsh law to ensure proper provision of teaching the law through the medium of Welsh and to assist students in their education and training as future practitioners. The Commission's full report is expected on 24 October.

Regulatory and wider policy developments

Mark Neale is to take over as director-general of the BSB next February. He is currently chief executive of the Financial Services Compensation Scheme.

Aidan Christie, QC, is to take over as chair of the BSB's independent decision-making body. The new decision-making body is replacing the professional conduct committee.

Nick Goodwin has been appointed as the Public Guardian for England and Wales. Mr Goodwin was formerly the Ministry of Justice's director for access to justice.

Simon Hayes has been appointed as CEO of HM Land Registry. Mr Hayes is currently a senior civil servant at the Home Office.

George Jenkins OBE is to step down as chair of the Professional Standards Authority when his term ends in December 2019.

The SRA and Nesta announced the Legal Access Challenge finalists. These include a chatbot for people with learning difficulties, tools to help women protect themselves from domestic violence and data-supported advice on employment disputes. Picked from 117 entries, they will each receive £50,000 in funding to develop their ideas over the next six months, with the two winners receiving a further £50,000 each next March. Meanwhile, the government has provided an extra £250,000 in funding for the challenge, which will double the number of finalists in and winners of the competition.

The LSB has approved CLC proposals to reduce its practising certificate fee by 30% and Compensation Fund contributions by 60%. The CLC said it was able to 'safely' consider reducing practice costs because of its proactive approach to securing compliance, while cost management and selling properties have helped reserve levels. The CLC wishes to position itself as the 'regulator of choice' for conveyancing and probate services.

The Service Complaint Adjudicator (SCA) has noted a sharp rise in the number of complaints about the service provided by the Legal Ombudsman. However, she said that, in general, it dealt with those complaints appropriately. LeO received 183 service complaints in 2018/19 – up 42% from 129 the year before – of which 45 were referred to stage 2 of the process, to be considered by a senior manager. Some 28 were then referred on to the SCA. The SCA noted that delay was an issue in many of the cases she received.

Lawyers in England and Wales are continuing to register in Ireland in anticipation of Brexit. The Law Society of Ireland has received 1,560 applications in the year to date –

more than 31 times the average annual rate in the years before the EU referendum. 3,706 lawyers from England, Wales, Scotland and Northern Ireland have registered since 2016. Major international commercial law firms are the main source of registrations.

The BSB has removed restrictions on chambers reporting data on barristers' sexual orientation, religion and belief. This type of data will now be treated in the same way as other diversity characteristics, such as gender and ethnicity. This includes a requirement not to publish if there is a risk of any individuals being identified from the data.

The Bar Council has signed up to Talk to Spot, an online service which will allow barristers to make anonymous reports of bullying and harassment. On receipt of an anonymous report, the service would contact the barrister and guide them on the options and support available, including formal reporting to either the BSB or Judicial Conduct Investigations Authority (at this point, the barrister would need to lose their anonymity).

The legal profession features highly in the Social Mobility Foundation's league table of 75 employers doing the most to improve social mobility. The sector has four spots in the top 10 - Baker McKenzie is the top performing law firm, with Linklaters and Bryan Cave Leighton Paisner also in the top ten. The MoJ is the top scoring government department.

Legal mental health charity LawCare has launched a new advocacy scheme, LawCare Champions, to mark World Mental Health Day. It has appointed 14 champions from a wide variety of legal backgrounds to help "drive positive change in the culture of law".

The First 100 Years project has launched a new campaign to inspire 100 young girls and women to become lawyers. The #GiftHerFuture campaign is calling for individuals and businesses to donate £100 in the name of a young girl or woman (up to the age of 30) who they want to inspire to enter the legal profession. Each name put forward will then have their name and age displayed on a permanent donor wall at the Supreme Court.

A Law Commission report has confirmed that digital signatures have legal force in most circumstances. However, the report stopped short of endorsing remote witnessing and echoed a Law Society warning that the 'rush' to encourage people to apply online for lasting powers of attorney could put individuals at risk. More widely, the Commission has recommended a wider future review of the law of deeds, to consider broad issues about the effectiveness of deeds and whether the concept remains fit for purpose.

OPBAS, the anti-money laundering regulator, is proposing an increase in the fees paid by the profession to fund its operations. Professional body supervisors will pay a fixed fee of £5,000 on the first 6,000 individuals that they supervise, and a per head rate of £44.36 (up from £36.25) on the individuals they supervise above this threshold.

King's College London is to launch a free online course to help explain the "workings, purpose and the impact of the modern judiciary" to young people across the country. The Massive Open Online Course (MOOC) will cover the work of the judiciary, examine judges' portrayal in the media and how to understand judgments.

A report by the International Bar Association has suggested that legal expenses insurance could increase access to justice for the 'forgotten middle'. It found that of the nine jurisdictions studied, England and Wales had limited uptake. Three key barriers to increased implementation and uptake of LEI policies are identified, including lack of awareness among consumers; limits of indemnity; and perceptions of conflicting interests of legal representation appointed by the insurer.

HMCTS has started to roll out a national pilot allowing legal professionals to access an online probate service. Online applications can be made for any probate, intestacy or a grant of letters of administration. The service for caveats will, however, remain a paper application for now. The online service will allow law firms to manage their own account on the system; view their probate applications in a single dashboard; and monitor the stages of their applications online, removing the need to phone HMCTS for updates.

Market developments

BPP has become the first law school to reveal details of a new conversion course aimed at getting students through the first stage of the SQE. Meanwhile, Deloitte has developed a new training contract programme specifically designed for the SQE. It is looking to recruit ten trainee solicitors on to the programme to qualify in 2023. Also, a “consortium” of prominent City law firms is working together to jointly appoint a legal education provider to help prepare its future trainees to undertake the SQE.

The future of BT Law is under scrutiny as the company that owns the ABS moves to focus more on its core business. BT has also recently outsourced some of its legal team to listed law firm DWF. BT obtained an ABS licence in 2013; its in-house team of over 70 staff provide services to external clients, particularly those with large vehicle fleets.

Leigh Day is attempting to fill a demographic gap by advertising for black applicants, renewing debate about how positive discrimination can boost diversity in the legal profession. It is recruiting six Afro-Caribbean or African heritage school-leavers for its apprenticeship scheme. Separately, Eversheds Sutherland announced new racial diversity targets, with the ambition that 14% of its UK team, including partners, will be from a black, Asian or minority ethnic (BAME) background by 2022.

Market intelligence and research

The divorce rate has fallen by 13% over the past year. The reasons are known, but lawyers have suggested that it is due in part to a rise in litigants in person following legal aid cases slowing the process down. Compared to a year ago the average time from petition to decree nisi increased by five weeks and the final stage by three weeks. Other possible reasons given include more couples choosing not to marry and even financial uncertainty around spouses’ personal circumstances caused by Brexit.

IRN’s annual report on the family law market found that two-thirds of divorce and separation clients now pay fixed fees, but less than half of them end up paying the price quoted at the start. Most of this group were charged a higher fee. The report also found that almost a third of clients (32%) were handling their divorce proceedings themselves from start to finish – in line with previous findings. The main reasons given for not instructing a lawyer were because the split was amicable and simple to deal with (76%), and because they could not afford to pay for one (36%).

SRA figures show a shift away from the partnership model. 47% of solicitor firms are incorporated businesses, up from 32% five years ago. The shift is attributed to lower numbers of sole practitioners and traditional partnerships. Limited appetite for personal risk (partners have unlimited personal liability) and tax efficiency are also key factors.

A study by the World Bank and International Bar Association seeks to demonstrate that the economic benefits of legal aid outweigh the costs. A study of 50 cost benefit analyses found tangible benefits in terms of hard cash helping to resolve claims, but also less tangible benefits that are harder to quantify, for example in terms of the social benefits of people's trust in the rule of law, and knock-on benefits for communities and commerce.

A survey by Legal Week has found that 44% of lawyers in city law firms have suffered work-related illnesses such as stress or depression. Recurring themes were the detrimental impact of a 'long hours culture', a fixation with billable hours and the pressure that comes from managing client expectations.

A Law Society report on LawTech concludes that surge of interest in technology-based approaches to improving access to justice is causing a duplication of effort. The research also identified barriers to wider take-up including 'widespread confusion, variation and fragmentation'. The Society called on government bodies, private sector and third sector organisations offering funds for legal technology and access to justice initiatives to agree on a set of principles to encourage long-term investment in the sector through co-ordination and collaboration. For this, it argued, a long term approach is essential.

Professor Roger Smith OBE's annual report on the digital delivery of legal services for the Legal Education Foundation argues that technology continues to hold both the promise and the actuality of change. However, it also highlights that, at the access to justice end of the market, there has been no transformative app or innovation, most provision remains face to face in traditional forms and cuts to funding have led to regression in some areas.

A poll by Scottish Legal Complaints Commission indicates **public support for independent regulation of lawyers.** YouGov found that only 19% of the public felt it was acceptable for an organisation to both represent lawyers and regulate them, with just 21% confident that such a body could deal with complaints about lawyers fairly.

A poll of by the National Leasehold Campaign (NLC) found that more than three-quarters of home-buyers did not feel fully informed and supported by their solicitor during the conveyancing process and a similar number regretted buying a leasehold property. The NLC said "several" people reported threats if they did not use the recommended solicitor, including losing their purchase altogether, or losing other advertised discounts, not being able to complete on time, and not being able to use the Help to Buy scheme.

The CLC's annual regulatory return indicates that licensed conveyancers feel consumers are shopping around more. However, 37% had increased prices and only 4% had reduced them since the new transparency rules came into force. The return also found that Brexit was the most commonly cited business risk for the coming year. Overall, there were strong levels of business confidence, with almost a half of practices (45%) expecting their work volumes to rise over the next 12 months.

The latest LexisNexis bellwether report has found a 'fundamental disconnect' among solicitors between the skills they think they need and the ones they actually need. The authors claimed a focus on human rather than business skills reflected a desire to "cling to the status quo" instead of changing with the times. Among skills ranked by solicitors in small and medium size firms as being lower in importance were being good at cashflow/cost management, a good understanding of commerce and finance, being good at generating business, having a service industry mentality, and demonstrating entrepreneurial skills.

Market intelligence and research

NO CHANGES SINCE THE LAST BOARD MEETING

Indicator of success	Source	2012	2013	2014	2015	2016	2017	2018	2019
<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	£3,470k	£3,725k
LSB levy per authorised person	LSB	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83	£19.00	£20.01
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%	27%	28%
Use of comparison/feedback sites: Individuals [○]	LSCP	1%	1%	1%	2%	2%	2%	2%	2%
Ease of shopping around: Individuals [○]	LSCP	57%	55%	54%	57%	57%	48%	54%	56%
Overall service satisfaction: Individuals [○]	LSCP	79%	80%	79%	78%	80%	80%	84%	84%
Providers publish prices on websites [○]	LSB					18%	18%		
Consumers who do nothing when dissatisfied [○]	LSCP	42%	44%	44%	42%	35%	49%	35%	37%
Public confidence in complaining about lawyers [○]	LSCP	49%	44%	45%	48%	43%	44%	45% B	
No action when have legal issue: SMEs [○]	LSB		8%		9%		10%		
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%		
<i>Increasing innovation, growth and the diversity of services and providers</i>									
UK wide legal services turnover (uninflated)	ONS	£27.9bn	£30.4bn	£30.8bn	£31.6bn	£32.4bn	£33.3bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	1,244	1,306
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	£3.0bn	£3.2bn	£3.8bn	£4.4bn	£3.9bn	£4.0bn		
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%	

KEY: [○] = Survey source