

Annex C - Horizon scanning report

(Covers the period 14 January 2019 to 15 February 2019)

The top five

The Post-Implementation Review of legal aid reforms has been published alongside a new vision for legal support. The new vision priorities early intervention, use of technologies and piloting new methods of delivering support. The measures also include some limited extensions in areas of law eligible for legal aid, a review of thresholds for legal aid eligibility, additional funding to support programmes supporting litigants-in-person and a public information campaign to help people access funding and support. The Ministry of Justice has also announced a review of fee schemes for advocates and litigators, expected to report towards the end of summer 2020, which is designed to ensure criminal defence remains a sustainable and attractive career.

The BSB has agreed its consumer transparency rules, which will come into force in May subject to LSB approval. All barristers' websites will have to explain their most commonly used pricing models, details of the services they offer and guidance around timescales for work. Public access barristers will have to provide more detailed pricing information, including indicative prices, in relation to eight types of work. However, child arrangements arising out of divorce or separation were dropped from the list following lobbying from the Bar Council and Family Law Bar Association during the consultation. Meanwhile, the SRA is to carry out randomised "web sweeps" of around 500 law firms over the next few months to check they are complying with its transparency requirements.

Chris Henley, chair of the Criminal Bar Association, issued a plea calling for action to tackle the "crisis" of **female criminal law barristers leaving the profession**. He cited complaints by female members about their treatment by judges and by the system as a whole. Meanwhile, Joanna Hardy, a rising criminal law barrister, made the headlines by tweeting that some barristers behave as though they are on a stag do when working with women. Separately, the BSB's latest diversity statistics show that the Bar is still largely dominated by people educated at independent schools, although there has been some progress in representation of women and ethnic minorities.

A UN task force has recommended that new regulatory models along the lines of those introduced by the Legal Services Act could help close the global justice gap. The report said the LSA "is an inspirational model that deserves to be followed and developed further." According to the task force 1.5bn people globally have unmet legal needs and this justice gap is set to widen. The report proposes that this need is best met from outside the formal justice sector, whereas the exclusivity of lawyers in some jurisdictions "contributes to an inward looking sector that does not innovate".

There has been controversy about the SDT's decision to strike off a whistleblower who had been bullied by her firm. Emily Scott reported criminal activity by her firm to the SRA, but only after she had completed her training. However, the tribunal ruled that she should have come forward much earlier. The SRA publicly supported the SDT's decision. The Junior Lawyers Division of the Law Society has since written to the SRA to ask what protections are available to trainee and junior solicitors who face difficulties in raising concerns in the workplace or who have been pressured into being complicit in misconduct.

Political developments affecting the justice sector

The House of Commons' Fourteenth Delegated Legislation Committee narrowly voted to approve a statutory instrument that would permit the **government's controversial probate fee reforms**. The reforms would apply a sliding scale of charges based on the value of estates rather than a flat fee, but opposition politicians accused the government of introducing a new tax through secondary legislation. The LEBC Group – a financial advisory business – has asked the CMA to investigate the proposed changes.

A Post-Implementation Review of Part 2 of LASPO – relating to civil litigation costs and funding reforms – has been published. Overall the government concludes that the reforms have been successful overall: costs have been reduced, fewer unmeritorious cases are being taken forward and access to justice at proportionate cost is generally being achieved. However, the review reports stakeholder criticism that the ban on referral fees in personal injury cases is being circumvented and the regulatory response has not been robust enough. Even so, the government is not planning any action in this area.

A new partnership between the UK and World Economic Forum (WEF) aims to create a regulation revolution to foster industries of the future. The deal, announced at Davos, will focus on areas on innovation aligned to the Industrial Strategy Grand Challenges.

The government has published a draft domestic abuse bill. It includes provision to prohibit the cross-examination of victims by their abusers in the family courts and provide automatic eligibility for special measures to support more victims to give evidence.

The Home Secretary and Chancellor will jointly chair **a new government taskforce which will work to tackle economic crime.** The Economic Crime Strategic Board includes a senior representative from the SRA. The Home Office has also announced funding to support work to reform the suspicious activity reports (SARs) regime.

The Housing Minister has unveiled new rules requiring estate agents to be transparent about referral fees received from conveyancers. She warned that if after a year the rules have proven not to be effective a complete ban will be back on the table. A standard reservation agreement – which both buyer and seller would sign after an offer is accepted, with possible financial consequences if one pulls out – will be piloted this year.

A report commissioned for the Labour Party by John McDonnell MP has recommended that the UK's current regulatory architecture should be replaced by a societal stakeholder model of regulation that is independent of government departments and regulated entities and puts citizens in a position to oversee regulatory effectiveness.

Regulatory and wider policy developments

Janet Paraskeva has been appointed for a second 4-year term as CLC Chair.

The SRA has appointed Selina Ullah and Peter Higson to its board. Ms Ullah is a board member of the General Optical Council and a large NHS hospital trust, as well as chairing a number of charities. Peter Higson is the chair of Cartfedi Cymru, which provides support to people with learning disabilities in Wales, and is a member of Bangor University Council.

Wanda Goldwag has become interim chair at the Leasehold Advisory Service and has also been appointed the Chair of the Financial Services Consumer Panel. .

The Civil Justice Council has appointed five new members. Familiar names include Elisabeth Davies, former chair of the LSCP, and Nick Hanning, former president of CILEX.

The SRA has paid Leigh Day £1m in costs following its unsuccessful appeal of the SDT's decision in the High Court. Meanwhile the Ministry of Defence published its correspondence with the SRA on the case.

HMCTS has now rolled out its online probate application system. The website includes the statement that 'for most people, a visit to a probate registry or solicitor's office is no longer needed'. Specialist solicitors cautiously welcomed the development while warning of the potential dangers of DIY probate for more complex estates.

BEIS has announced the second round of funding from the Next Generation Services Business Fund for a series of projects relating to LawTech. Among the highlights, Legal Beagles Group and IBM have been awarded £262k to develop an online "bot" for quick legal advice. Another consortium bid with third sector partners was awarded £182k to explore both the possibility of advice charities sharing data to understand their user's journeys and where users would benefit from being guided into the wider legal services market.

The Council of Europe has adopted the first European Ethical Charter on the use of AI in judicial systems. The Charter provides a framework based on five principles: respect of fundamental rights; non-discrimination; quality and security; transparency, impartiality and fairness; and 'under user control'.

The Bar Council has for the first time made membership available to chambers as well as individuals after feedback revealed that chambers staff, including clerks and managers, wanted to take part in training courses and events previously open only to barristers. Prices range from £3,000 for a standard membership to £5,950 for a gold membership.

Sir Geoffrey Vos, Chancellor of the High Court has suggested that court technology can speed up progress on diversity. He suggested that if technology meant hearings did not require lawyers and judges to be physically present, it would be less disruptive to home life. Sir Geoffrey accepted that existing efforts to reform the diversity of the judiciary, while well-meaning and heading in the right direction, were not bringing change fast enough.

The BSB has completed a review into whether there are unjustified and discriminatory **barriers to pupillage** at the advertising and recruitment stage. This concluded that unpaid mini-pupillages would indirectly discriminate against would-be barristers from poorer backgrounds. It also found that in 39% of cases advertising and selection criteria used by chambers and other organisations required a first or upper second-class degree.

The CLC has launched a project to support its regulated community in developing more formal measures to promote diversity and inclusion. Its last annual return showed that 57% of firms monitored workforce characteristics, mostly on an informal basis.

Elizabeth Johnson has become the first female chartered legal executive appointed to the judiciary. There are already two male chartered legal executives on the bench.

170 US general counsel have signed an open letter warning law firms to do better on diversity or they will take their work elsewhere. A number of high-profile UK GCs have said they will sign the letter or support a comparable initiative.

The Law Society is calling on firms to pay trainees its recommended minimum salary following a dip in average earnings. It announced a 2.6% increase in recommended minimum salaries, to £22,121 in London and £19,619 outside. Meanwhile, the Young Legal

Aid Lawyers group urged the SRA to abandon its decision to scrap mandatory minimum salaries for trainees. It said its research over the last eight years had revealed that low salaries in the legal aid sector were consistently the main barrier to social mobility.

International firm Pinsent Masons has been hailed as the most inclusive employer in the UK after topping the annual list compiled by LGBT charity Stonewall. The law firm had provided specific training to ensure a welcoming environment for trans people, and could demonstrate a range of inclusive policies and practices for LGBT staff.

LawCare, a charity which runs a helpline for lawyers, has received **twice as many reports of bullying and harassment** compared to a year ago. Overall it received nearly 1,000 calls, up 5% from 2017. The most common issue involved stress.

A report by JUSTICE recommends changes to place the lay user at the heart of the justice system. The report argues that the at-times chaotic nature of proceedings creates a culture that marginalises the public, especially when a litigant-in-person is facing a lawyer. The 41 recommendations include avoiding lawyer 'banter' and archaic language such as 'learned friend', making procedural rules more accessible and better information provision.

The Law Society has released a short, animated film about nurse and single parent Peter, who is charged with affray following a fight that he was not involved in, to launch an '**urgent campaign to fix the 'broken' criminal justice system**'. It says the chances of a fair trial are diminishing and the system is functioning so poorly that it is affecting the UK's international reputation. The video deals with the potential impact of a shortage of criminal duty solicitors, the 'overly stringent' legal aid means test, court listings issues and disclosure failings.

Writing on the LSCP's blog, Cathy Gallagher called on the government, legal regulators and others need to come together to ensure that the **next generation of lawyers have the chance to study social welfare law** or face even more 'advice deserts'.

The UK has been ranked 2nd out of 50 jurisdictions for its intellectual property regime by the US Chamber of Commerce Global Intellectual Property Index. The index considers factors that ensure businesses can obtain, exploit and enforce IP rights. The UK is praised for its sophisticated IP environment and effective enforcement.

The SRA has launched a revised enforcement strategy and reporting obligations. Alongside the strategy, a series of 'topic guides' summarise the main mitigating and aggravating factors it takes into account when considering cases in a number of common areas. It also announced a review of its whistleblowing guidance, in particular in respect of the reporting of information that may be subject to confidentiality agreements such as NDAs.

Following its tailored review, **the Law Commission's funding model is to be reviewed to address concerns about a lack of independence from government**. Under the model, the Law Commission has to supplement its core funding by charging government departments for projects it undertakes on their behalf, but the reviewers were concerned that work was being prioritised on ability to pay rather than greatest need.

A landmark ruling by the Supreme Court on solicitors' professional negligence has been welcomed by the profession and insurers. The Court overturned a Court of Appeal decision that law firm Raleys should have to compensate its former client for failing to make a claim – so-called "loss of chance" claims. Had the court ruled in favour of the claimant, it may have opened up a new category of professional negligence claims against solicitors.

Market developments

KPMG has announced an expansion of its legal services offering, by opening an associate law firm in Hong Kong and another in Shanghai. This coincides with plans by Hong Kong's Law Society to scale back the share of the sector held by foreign lawyers. The Law Society proposes to limit the number of foreign lawyers by ensuring that firms hire two local lawyers to every one foreigner. At the moment, the ratio is one-to-one. The firm has also announced the launch of a legal consultation service in the UK, which will help in-house counsel and law firms adapt their teams to meet the demands of the modern legal market.

Rocket Lawyer has launched a partnership with a major European insurer which gives its clients access to its full range of services directly from their devices. The venture is co-branded under Rocket Lawyer's own name rather than white-labelled. Rocket Lawyer is in talks with UK insurance companies to replicate the model in this jurisdiction.

A barrister entrepreneur has launched a DIY platform, Sparqa Legal, aimed at small businesses. SMEs will have subscription access to straightforward legal advice without recourse to a human lawyer. SMEs will be charged £25 a month plus VAT – or £240 annually – for access to dedicated Q&As and document assembly-type applications.

Market intelligence and research

A survey by the Law Society's Junior Lawyers Division has found that **half of junior lawyers are not aware of what lawtech is and nearly two-thirds do not think its perceived growth affects their job responsibilities**. However, just over 70% of respondents thought their area of law could benefit from technological advances and 43% predicted a fall in the number of those qualifying as a result of technology.

Law Society commissioned research into lawtech adoption found that law firms are under increasing pressure to adopt lawtech, with the rewards for doing so "potentially huge", but despite this the profession, in particular smaller firms, has been slow to embrace systems that would radically change legal services.

New research has found that the Big Four accounting firms are really starting to make their mark in the law, with 23% of large law firms in the UK and US saying they have lost work to them in the past year. The report also showed how the role and influence of alternative legal services providers (ALSPs) is growing. It estimated that the ALSP market in the US, UK and Canada was worth an estimated \$10.7bn (£8.2bn) in 2017 revenue, compared to \$8.4bn in the first study of its kind two years ago. Of this, the lion's share of the market was attributed to independent legal process outsourcers.

LexisNexis's latest bellwether report has found that **solicitors are worried that publishing fees will encourage potential clients to obsess about price**, which will affect their ability to uphold the integrity of the law. Only 1 in 10 solicitors thought transparency was a 'force for good'. Three in 10 respondents have already published their prices or are getting ready to. However, a third of respondents' firms considered, then decided against, publication.

Market intelligence and research

CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS

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	
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 ^o	LSCP	43% ^A	42%	43%	47% ^A	42% ^A	45%	45%	
Public confident consumer rights protected ^o	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 ^o	LSB	15%	14%	13%	14%				
Levels of shopping around: Individuals ^o	LSCP	22%	22%	24%	25%	25%	27% ^B	27%	
Use of comparison/feedback sites: Individuals ^o	LSCP	1%	1%	1%	2%	2%	2% ^B	2% ^B	
Ease of shopping around: Individuals ^o	LSCP	57%	55%	54%	57%	57%	47% ^B	58% ^A	
Overall service satisfaction: Individuals ^o	LSCP	79%	80%	79%	78%	80%	80%	84% A,B	
Providers publish prices on websites ^o	LSB					18%	18%		
Consumers who do nothing when dissatisfied ^o	LSCP	42%	44%	44%	42%	35%	49% ^A	35% A,B	
Public confidence in complaining about lawyers ^o	LSCP	49%	44% ^A	45%	48%	43% ^A	44%	45% B	
No action when have legal issue: SMEs ^o	LSB		8%		9%		10% ^B		
Levels of shopping around: SMEs ^o	LSB						22%		
Ease of finding provider: SMEs ^o	LSB				25%		50%		
Lawyers perceived as cost-effective: SMEs ^o	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	£32.6bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	1,244	
Level of service innovation (over 3yrs) ^o	LSB				28%			26%	
Regulation seen as barrier to service innovation ^o	LSB				50%			40% A,B	
Firms state reduced prices in last 12 months ^o	LSB					4%	4%		
Net exports of UK legal services	ONS	£3.1bn	£3.4bn	£4.0bn	£4.3bn	£4.1bn			
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%	

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