

# Horizon scanning report

(Covers the period 3 July to 2 September 2019)

## The top five

**Robert Buckland QC is the new Lord Chancellor and Secretary of State.** A criminal barrister by background, previously he was Minister of State in the department and before that the Solicitor General. Lucy Frazer QC, who was the Solicitor General, took his place as Minister of State. The new Solicitor General is Michael Ellis. Paul Maynard became parliamentary under secretary of state with responsibilities including the courts, legal aid and the criminal and family justice systems. Lord Keen retained his role as the minister with responsibility for legal services.

**New government guidance states that Registered European lawyers (RELS) will have a grace period until the December 2020 to sort out how they will continue to practise in the UK, even if there is a no-deal Brexit.** Non-RELS wanting to stay would have to requalify to provide reserved legal activities, or register as a registered foreign lawyer (RFL) if they did not want to provide reserved services, but instead work jointly with a UK lawyer. However, the government was unable to say what would happen to UK lawyers working in the EU or EEA since the European Commission has yet to specifically address this issue. Meanwhile, the Law Society has forecast that legal services turnover would fall by £3.5bn in the event of a no deal Brexit. It said this was 10% higher than if there was an orderly exit.

**The SRA is considering making the first stage of the SQE multiple choice only and is exploring alternatives to the skills section following a pilot.** An independent review of the pilot found the written skills assessment 'raised significant concerns about reliability, fairness and standard setting'. It also suggested that BAME candidates were disadvantaged by the test. The Association of Law Teachers suggested the pilots were so flawed it was impossible to judge whether SQE would be fit for purpose. Richard Moorhead also criticised the report in his blog for lacking detail and robustness.

**The LSCP has published the result of its latest annual tracker survey.** It shows a third of consumers are now accessing legal services online while telephone-based services are declining. Shopping around increased marginally to 28% as did the number of those who found it easy to make comparisons between providers, but the proportion finding it easy to compare on price fell significantly. Elsewhere service satisfaction stayed at the peak of 84% achieved last year, but the number of 'silent sufferers' – dissatisfied consumers who do not complain – increased slightly to 37%, although lower than the peak of 50% in 2017.

**The BSB is to withdraw funding from the Legal Choices website from November.** A BSB spokesperson said: *“Having invested significantly in the Legal Choices website in recent years, the BSB has decided that it can best meet its aims to offer the public information about how to get legal help from barristers via its own website which it is currently redeveloping.”* The LSCP said it was disappointed by the move and called on the BSB to reconsider. One of the recommendations of the CMA's market study into legal services was revamping and promoting the existing Legal Choices website. The LSB issued a media comment stating that we were in ongoing dialogue with the BSB and other regulators and underlining the importance of regulators investing in transparency measures.

## Political developments affecting the justice sector

**The 2019 spending review included a 4.9% increase in real terms to the Ministry of Justice's budget** – having been one of the most severely cut departments this decade – taking it from £7.6bn in the current year to £8.1bn in 2020-21. This will go towards prisons, reform of the probation system and the CPS to build capacity and manage caseloads over the next two years.

**The government has published an Economic Crime Plan** to bring together actions to overhaul the approach to tackling economic crime, with greater partnering between the government, law enforcement and the private sector. Signatories to the plan include the SRA, Law Society and ICAEW. Meanwhile, the impersonation of lawyers to commit advance fee frauds has been added to the list of large-scale cyber-attacks from which the government's National Cyber Security Centre (NCSC) is trying to protect the public.

**The government is consulting on a strengthened Victims' Code.** Proposals include greater clarity around victims' rights, improved awareness of support, guides for victims and practitioners, and revising the current categories for victims entitled to an enhanced service to make it simpler, with a greater focus on identifying and meeting the needs of the victim.

**The government has pledged to change the law to ensure that employees signing NDAs receive independent legal advice.** Further reform will also allow people signing NDAs to disclose information to their lawyers, as well as the police and regulated health and care professionals, while the SRA has pledged to update its guidance to the profession. Meanwhile, the Law Society launched what it called "a public legal education initiative" to help employees understand their rights when faced with NDAs.

**Innovate UK has set up the Enabling Data Access Innovation Lab**, which will award up to £3.5 million to projects developing data access methods to enable the application of AI and data technologies in the accountancy, insurance and legal services sector.

## Regulatory and wider policy developments

**Lord Robert Reed has been appointed as the next President of the Supreme Court.** He will take over from Lady Hale in January. Lord Justice Hamblen, Lord Justice Leggatt and Professor Andrew Burrows will also join the Supreme Court as justices during 2020.

**Matthew Foster has been appointed as new President of CILEx.** Mr Foster has a background in local government and his first priority is calling for changes to the law so that legal executives have equality of opportunity within the profession.

**Simon Dingemans was confirmed as the new chair of the Financial Reporting Council.** He will lead its transition to the Audit, Reporting and Governance Authority (ARGA).

**The SRA is consulting on introducing a centralised advocacy assessment for solicitors wanting higher rights of audience.** The revised test would be a new requirement for advocates handling more serious cases in the youth courts and would no longer be available to trainee solicitors. In a survey of solicitors carried out to inform the proposals, 30% believed the overall quality of advocacy had improved in the past 10 years, 29% thought it had stayed the same and 19% felt it had declined.

**The SRA has assessed the impact of its continuing competence regime, which replaced hours-based CPD.** It found that 52% of solicitors were "doing about the same

amount” of professional training. A further 40% were doing more and the rest doing less. Solicitors said the new approach has helped them to better identify their learning and development needs, meaning training had become “more relevant and targeted”. Most firms also said they had made cost savings because of the greater flexibility. However, the SRA found there was a mixed picture in the way solicitors recorded their training.

**The SRA has published an analysis of first-tier complaints data.** It shows law firms resolve 81% of complaints in-house, up from 78% in 2017 and 72% in 2012. The total number of complaints has risen since 2012 but fell slightly last year. Medium-size firms received the most complaints relative in turnover while large firms resolved the highest proportion of complaints. Delays, failure to advise and excessive costs were the most common complaints. The SRA also published a risk paper on standards of service.

**The SRA has published its first ever report detailing its investigation, supervision and enforcement work over the past year.** In all, it received 11,508 reports about possible wrongdoing by solicitors, of which 60% came from the public and 25% from the profession. One of the key themes was sexual harassment in the workplace, which was the subject of 70 complaints, 13 of which related to the potential misuse of NDAs. The SRA also said that money laundering reports were rising significantly – 218 compared to 152 the previous year. By contrast, issues around solicitors’ handling of holiday sickness claims had fallen.

**The SRA has provided more detail about its plans to increase corporate transparency.** This includes publishing a statement that explains how it is accountable, with an associated transparency policy and decision-making framework. Social media will enable real-time reporting from board meetings and regular sharing of information, with a new landing page on the SRA website to guide people to video, blog and podcast content. It has also committed to make its publications more accessible by moving away from hard copy publications such as the annual review, in favour of more targeted communications.

**The Office of the Immigration Services Commissioner has expressed ‘deep concern’ at SRA rules allowing solicitors to operate from unregulated businesses.** Immigration is the only area of law which is not one of the reserved legal activities but is subject to a standalone regulatory regime that allows non-lawyers to practise in it, overseen by the OISC. Despite its concerns, under the new rules, solicitors will not be able to deliver immigration services outside of firms authorised either by a legal regulator or the OISC.

**The BSB is to cut the length of time that sanctions against barristers appear on the public record.** For barristers suspended for a year or less, details will be published for five years instead of the current ten. Barristers suspended for over a year will have details published for 10 years compared to indefinitely. The time period for disbarred barristers will be 60 years instead of indefinitely. The SRA applies different time limits.

**The Bar Council has backed the BSB’s suggestion of written pupillage agreements,** saying they could crack down on the ‘truly shocking’ and ‘abusive’ treatment of some pupils.

**The Legal Ombudsman is being sued by complainants whose contact details were mistakenly disclosed to one another in an email.** In June, some 300 people received an email from the ombudsman asking them to review how well their complaints had been handled. However, the ombudsman published the names and contact details of all 300 recipients in the address bar by mistake. The Legal Ombudsman said it had notified the Information Commissioner’s Office which confirmed no further action was required.

**Ministry of Justice figures show the numbers of law centres has fallen from 94 in 2013/14 to 47 today.** Lambeth Law Centre was the latest to close in July due to financial

pressures. In better news, the Law Centres Network has been awarded a £500k National Lottery grant to improve law centres' digital capabilities.

An independent advisory committee set up under the Wales Act 2017 has advised the Lord Chancellor that **a lack of dedicated curriculum modules on Welsh law could result in few practitioners knowing how laws of England and Wales diverge**. Although Welsh legal and education training providers now offer Welsh-focused content, very few providers in England do so.

**France has passed a new law exempting judges from the general right to use court decisions to analyse future judicial decision-making**. This is thought to be the first action worldwide to ban legal data analytics in this way. The French national bar has published a resolution demanding that lawyers are exempted in the same way as judges.

**California is on the verge of relaxing rules about the involvement of non-lawyers in the profession**. The State Bar of California is contemplating new proposals to lift practising restrictions and allow non-lawyers to share law firm profits. The 16 options for possible changes follow a task force report commissioned last year into how California could widen access to justice and encourage innovation. The proposals would also narrow the principle of the unauthorised practice of law. A decision is expected by the end of the year. Since the California announcement both Utah and Arizona have indicated they will follow similar paths.

The Financial Conduct Authority has published a Call for Input on the concept of a **Cross-Sector Sandbox**. The concept is a single-point-of-entry sandbox for firms to test innovative propositions with multiple UK regulators, in a controlled environment.

## Market developments

**Media reports have suggested that Mishcon de Reya is considering a stock market listing**. Mishcon is an ABS with a turnover of £168m in its last financial year. It pioneered the growing trend of law firms incubating technology start-ups and worked with the Land Registry on a trial of blockchain involving the digital transfer of property ownership.

**Staying Put, a domestic violence charity, has set up an ABS**. It will service people who are not eligible for legal aid but cannot afford a solicitor, aiming to charge between 20-30% less than high street lawyers. The initiative was made possible following a £105,000 grant received from the Police and Crime Commissioner for West Yorkshire.

**Qredible, a pan-European lawyer comparison website, is to launch in the UK**. It will be based on the five-year-old Mon Avocat website. Qredible will initially target conveyancing and divorce practitioners. Annual subscriptions will cost £960 plus VAT for individual lawyers and £3,000 for firms, including two individual profiles. The site will aim to provide an average of two leads per month.

**Cancer Research UK, the biggest recipient of legacies in the country, has launched a free online will service with Farewill, a leading unregulated will writer**. Farewill expects to be writing one in ten wills by the end of this year, making it the biggest will writer in the country. Farewill uses an algorithm to allow online users to create a will in half an hour. Its will checkers manually check each will before it is returned to the customer for witnessing.

In the first of its kind, **a firm regulated by IPReg has merged with a firm regulated by the SRA**. The SRA granted a waiver from the need for run-off cover to enable it to change

regulator. Hazeltine Lake Kempner said the deal would allow it to provide the full spectrum of IP services, including litigation and IP transactional support.

**Burford Capital, the world's largest litigation funder, saw its share value plummet after researchers questioned its accounts reporting.** The self-styled 'activist short seller' Muddy Waters shorted the funding giant and alleged that investment data showed Burford has been 'egregiously misrepresenting' its returns on invested capital and rates of return. The company is likely to face a class action in the US.

**Latest figures show a dip in the conveyancing market,** with the slowest quarter activity for two years. Acumen, which analyses Land Registry data, reported a 10% fall since the start of the year and a 20% fall from the second quarter of 2016 – before the EU referendum.

## Market intelligence and research

**Turnover in the sector reached an all-time high in the second half of 2019 of £17.8bn,** according to official ONS statistics.

Research by Nesta Challenges, an independent technology innovation organisation, has revealed **43% of SMEs and the self-employed think the legal system in England and Wales is set up only to suit big businesses and those with the resources to pay for it.** The research also revealed nearly 80% believe it should be easier to check if a problem can be resolved through the legal system. 45% said they were very willing to embrace digital services to help with legal problems.

**New BSB figure show that White students are significantly more likely to obtain pupillage** than those from BAME backgrounds, with the gap widest among those who have not achieved the highest results. Also, the proportion of Bar professional training course (BPTC) students from outside the UK and Europe has reached almost half.

**New Judicial Office statistics show that solicitors are less represented among the judiciary than they were four years ago despite initiatives to improve diversity on the bench.** Just a third of court judges used to be solicitors or legal executives, and figures are far lower in some judicial areas. Figures also show that 32% of court judges and 46% of tribunal judges are now women, an increase of six and three percentage points respectively over the past four years. Meanwhile, 7% of court judges are black, Asian or minority ethnic (BAME), compared with 11% of the general population.

**Thomson Reuters' annual review shows a shift away from traditional law firms to alternative providers,** such legal start-ups, specialist providers and large accountancy or consulting firms. Its survey found almost half of corporations buy in legal services from alternatives and a further 11% were planning to do so next year. In total, the alternative legal services market was found to have generated nearly \$11 billion (£9 billion) in revenue in 2017, a rise of more than 27% since the previous year.

**A report by the charity Transform Justice has said an effective system is needed for monitoring the quality of criminal defence lawyers.** The report singled out "poor remuneration" as the biggest barrier to improved quality and complained of "perverse financial incentives". It said lack of trust in lawyers was "fuelled by the difficulties defendants face in checking out lawyers and complaining about them", and the fact that few defendants complained. The report suggested: "*Lawyer opposition killed QASA and no one has dared to put any new way of assessing the quality of advocacy on the table*".

## 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	£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 <sup>○</sup>	LSCP	43% <sup>A</sup>	42%	43%	47% <sup>A</sup>	42% <sup>A</sup>	45%	45%	
Public confident consumer rights protected <sup>○</sup>	LSCP	49%	46%	46%	50% <sup>A</sup>	46% <sup>A</sup>	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 <sup>○</sup>	LSB	15%	14%	13%	14%				
Levels of shopping around: Individuals <sup>○</sup>	LSCP	22%	22%	24%	25%	25%	27%	27%	<b>28%</b>
Use of comparison/feedback sites: Individuals <sup>○</sup>	LSCP	1%	1%	1%	2%	2%	2%	2%	<b>2%</b>
Ease of shopping around: Individuals <sup>○</sup>	LSCP	57%	55%	54%	57%	57%	48%	54%	<b>56%</b>
Overall service satisfaction: Individuals <sup>○</sup>	LSCP	79%	80%	79%	78%	80%	80%	84%	<b>84%</b>
Providers publish prices on websites <sup>○</sup>	LSB					18%	18%		
Consumers who do nothing when dissatisfied <sup>○</sup>	LSCP	42%	44%	44%	42%	35%	49%	35%	<b>37%</b>
Public confidence in complaining about lawyers <sup>○</sup>	LSCP	49%	44%	45%	48%	43%	44%	45% B	
No action when have legal issue: SMEs <sup>○</sup>	LSB		8%		9%		10%		
Levels of shopping around: SMEs <sup>○</sup>	LSB						22%		
Ease of finding provider: SMEs <sup>○</sup>	LSB				25%		50%		
Lawyers perceived as cost-effective: SMEs <sup>○</sup>	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) <sup>○</sup>	LSB				28%			26%	
Regulation seen as barrier to service innovation <sup>○</sup>	LSB				50%			40% A,B	
Firms state reduced prices in last 12 months <sup>○</sup>	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: <sup>○</sup> = Survey source