

Horizon scanning report

(Covers the period 11 October to 14 November 2019)

The top five

The Government has awarded £2m funding to Tech Nation to help support the digital transformation of the UK's legal sector. Tech Nation will be responsible for driving forward and building on the work of the LawTech Delivery Panel and the funding will help deliver a series of projects to be delivered over 3 years. As an early priority, the Panel is to develop and plan the implementation of a 2022 lawtech vision.

Following stakeholder feedback the SRA has proposed that students should be able to write their SQE answers in Welsh but the question papers will remain in English. This was because translating questions would be very expensive and its view would not represent a proportionate response to the modest demand. The SRA board agreed to conduct a feasibility study and seek stakeholder views on giving candidates this option. Cardiff University and the Law Society both expressed disappointment at the decision.

The Law Society Junior Lawyers Division (JLD) has issued a further warning that the SRA's proposed SQE "poses significant risks to the standing and credibility of the solicitor qualification". Amy Clowrey, outgoing Chair of the JLD wrote to the LSB, Justice Select Committee and Welsh Language Commissioner raising the division's concerns over the SQE's impact on diversity (including the exam's availability in Welsh), standards of qualification, and the independence of assessments of SQE Part 1 pilot.

It was reported that the Bar Council has urged the BSB not to make significant changes to its handbook unless there was 'evidence and justification', since fundamental change was likely to bring 'further avoidable confusion and disruption'. It also drew attention to the number of updates to its handbook which it said risked becoming 'overwhelming'.

The largest study of the ethics of in-house lawyers ever undertaken has shown a "gloomy picture" of lawyers wedded first to the commercial objectives of the companies they work for, with the public interest second or nowhere to be seen. It was carried out by Richard Moorhead and Steven Vaughan in collaboration with Lawyers on Demand. The authors highlighted the issue of NDAs as an example of how lawyers were caught between the conflicting demands of satisfying employers, while also keeping in mind broader rule of law considerations. The study also found widespread ignorance of professional ethics.

Political developments affecting the justice sector

Paul Uppal has stepped down as Small Business Commissioner. Fiona Dickie, the Deputy Pubs Code Adjudicator, will provide oversight in the Small Business Commissioner role until early November, pending the appointment of an interim Commissioner.

The government has abandoned plans to increase probate fees. The draft legislation on probate fees had stalled following the prorogation of Parliament and was not reintroduced in the Queen's Speech. The Law Society has claimed a victory in halting what it calls the 'grief tax'. The government will look again at the issue as part of a wider review of court fees.

The Lord Chancellor has told the Chair of the Criminal Bar Association that an announcement on barristers' defence fees will be made at the start of 2020. The announcement is expected to include proposals on flat brief fees, cracked trials and unused material. 'Positive changes' would be made by 2020 on the basis that Robert Buckland continues as Lord Chancellor following the election.

The Justice Select Committee has said enhancing access to justice appears to be ancillary to the HMCTS court modernisation programme rather than its central goal. Its report went on to say that the programme was proceeding on the "mistaken assumption" that people with limited legal capability would be able to navigate their way through conventional and digital court processes without the benefit of legal advice.

The Bar Tribunal Advisory Service has cleared Lord Keen of misconduct following his earlier plea of guilty to a firearms offence. Lord Keen had been fined £1,000 in the Scottish courts for failing to secure a shotgun left in the basement of his house in Edinburgh. The tribunal ruled that he had breached the barrister's code, but the offence was not serious enough to constitute professional misconduct. It emerged that the BSB had chosen to bring the case before BTAS against the advice of its own case officer.

Regulatory and wider policy developments

Carilyn Burman has been appointed CEO of CILEx Regulation. She is currently Director of Membership at the Chartered Institution of Building Services Engineers.

Christina Blacklaws has been appointed as legal services ambassador at KPMG and to the advisory board of alternative legal provider Elevate.

The SRA has announced a fresh sweep of law firms' websites to check compliance with its transparency rules. A random sweep of 500 firms earlier in the year found that 17% had not attempted to comply, while only a quarter were fully compliant. Later in November it will be compulsory for all firms to display the SRA's digital logo.

An SRA sweep found 21% of firms were not compliant with anti-money laundering regulations. It identified a problem with firms using template risk assessments, such as different practices submitting "near-identical" assessments. The SRA will shortly write to the 7,000 firms that fall under the scope of the Money Laundering Regulations to ask them to confirm they have a firm risk assessment in place. It will also be carrying out an "extensive programme of targeted, in-depth visits to firms and calling in more firms' risk assessments".

A report by Transparency International claims that dozens of UK law firms are – wittingly or unwittingly – providing corrupt individuals with services that enable them to "move, hide and defend their ill-gotten gains with impunity". It called for a

“fundamental overhaul” of the anti-money laundering regime, identifying as a major problem regulatory bodies that have a role as AML supervisors that are also connected to their representative bodies. 32 law firms were found to be involved in ‘Laundromats’ – a series of immense corruption schemes uncovered by the Organised Crime and Corruption Reporting Project. The report also called out a “serious and worrying pattern” of UK law firms issuing ‘cease and desist’ letters to journalists and NGOs seeking to expose potential corruption.

The SRA CEO has said there will be no let up in prosecution of senior solicitors suspected of sexual misconduct with colleagues. Paul Philip said he was aware of criticism from some quarters that the regulator should not investigate cases involving sexual relations between people from the same firm, but was unapologetic about the SRA tacking this issue. He suggested more cases are in the pipeline – although conceded they are taking longer to bring before a tribunal than expected.

The SDT has ruled in a high-profile sexual misconduct hearing. It fined Freshfields partner Simon Beckwith £35,000 plus £200,000 in costs following a nine-day hearing. An SRA spokesperson said they were “surprised by the sanction”, which may indicate it will appeal. A regulatory lawyer suggested the prosecution marks a ‘turning point’ in the way the SRA addresses the boundary between private and working lives since in the past it would have rejected the complaint as falling outside of its remit.

Aviva has accused claimant personal injury solicitors of buying leads obtained illegally and in breach of the referral fee ban. Claims management companies are paid to ‘introduce’ clients to solicitors by acting as lead generators, effectively circumventing the LASPO ban on referral fees in connection with PI claims. Aviva has proposed that solicitors should have to declare the means by which the client was obtained, and through which business the client was referred, to ensure it was not a lead secured without proper consent.

The BSB has issued new guidance on use of social media¹. It warns barristers they could face disciplinary action if they take part in ‘heated’ internet debates, post ‘distasteful’ comments online, or even reveal their whereabouts (since this could inadvertently reveal who they are acting for).

BPP Law School revealed that its new Barrister Training Course – a shorter, more flexible version of its current Bar Professional Training Course (BPTC) Programme – will cost over £5,000 less than the BPTC. BPP revealed the course, which will last eight months compared to the BPTC’s 12, earlier this year.

The Law Society of Scotland has launched a new accreditation for lawyers with specialist technology roles, such as legal process engineer and legal analyst. It said the new specialisms were created in response to the development of new roles within the legal sector. The new accreditation will initially be open to Scottish solicitors and Law Society of Scotland accredited paralegals before being rolled out to other professionals working in legal technology in the “near future”.

Law firm Bird & Bird has published a report on blockchain. A general theme throughout is that there is a need for governments and regulators to draw a distinction between where new regulation is genuinely needed to minimise risk and provide protection, and where existing laws and regulations already meet those criteria. The report discusses how fresh regulation, when it comes, should aim to provide confidence, stability, and certainty for blockchain users in financial services and other sectors.

¹ This was guidance to assist the profession only and did not constitute a regulatory arrangement.

Swansea University and the Welsh Government have announced £5.6m investment in LegalTech and access to justice, including cyberterrorism research. Backed by £4m of EU funding, the project will deliver a cyber-threats research suite, a 'Legal AI' laboratory and a Legal Innovation Centre where law firms and technology companies can work with researchers and with a software development team, on the development of innovative products and services. The funding will also support a law clinic where these products and services can be piloted with a focus on access to justice.

Supreme Court Judge Lord Sales has called for an 'expert commission' to explore regulation of algorithms in the justice system. Giving this year's Sir Henry Brooke Lecture, Lord Sales indicated that such a commission would bring agency to decisions made by computers.

A report by the Administrative Justice Council has claimed **vulnerable people without access to the internet could be excluded from the justice system as the government pushes court services online.** Its annual report raised concerns that vulnerable people could struggle to get legal help as more systems become digitised as part of the £1 billion courts and tribunals modernisation programme.

Disciplinary action against the judiciary is on the rise despite a drop in the number of complaints. In its annual report for 2018/19, the Judicial Conduct Investigations Office said 55 sanctions were issued this year, the highest number since 2014/15. Over 60% of these related to magistrates. The overall number of complaints against the judiciary dropped by almost a quarter however, from 2,147 in 2017/18 to 1,672. While the majority of complaints related to judicial decisions and case management, there were also 293 complaints about inappropriate behaviour and comments.

A think tank has recommended that professional magistrates should be created to halt the recruitment crisis. The Project for Modern Democracy, run by a Conservative MP, called on the government to mirror reforms in New Zealand by creating a two-tiered system. While volunteer magistrates would continue, another level of part-time, professional magistrates who would sit more frequently would be created.

Market developments

Top 40 accountancy firm Streets has set up an ABS, Streets Law. The plan is to expand to provide employment law, litigation and property advice. While all the Big 4 firms have ABS licences from the SRA, only three of the rest of the top 100 do: Kingston Smith, Price Bailey and Barnes Roffe.

Reed Smith has become the first international firm to gain an ABS licence. The licence applies to the UK LLP since ABS models are not permitted in the firm's home jurisdiction of Pittsburgh, Pennsylvania. Reed Smith explained the move as future-proofing its business so that it could provide clients more than advice on the black letter law.

International law firm DWF has acquired BT Law Ltd., the legal arm of telecommunications giant BT, six years after it receives its ABS license. DWF Connected Services Holding Limited holds 75% or more of the shares in BT Law Limited. DWF CEO Andrew Leatherland and Chris Stefani, chief financial officers, have agreed to be directors. The acquisition comes three months after DWF won a five-year contract to become BT's 'strategic legal partner'.

Market intelligence and research

According to the ONS's latest data on size and growth within UK non-financial business sectors, **the UK legal sector's turnover increased by £1.5bn (taking into account inflation) between 2017-18.** This compares to a £0.1bn increase in 2016-17. The legal services sector (4% increase also outperforms the 'UK non financial service industries' sector generally (0.1%), but is markedly lower than the 'Accounting, bookkeeping and auditing, activities; tax consultancy' and 'Management consultancy activities (which both increased by 11%). ss

Analysis has shown global investments in legal technology companies are nearing a record £1bn this year. The £44m raised by London-based ContractPodAI was the largest in the UK, a new analysis has revealed.

Oxford University has been awarded a government grant of £213,000 to research the people rather than the technology behind the legaltech boom. Mari Sako and her team will be interviewing entrepreneurs, investors and innovation managers to help identify links between them. The study will run for 18 months until March 2021.

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The UK has risen to 8th place in the World Bank's Ease of Doing Business index. It is the 2nd best country in the G7 after the US and the 2nd best in Europe after Denmark.

SRA research with disabled people found that solicitors firms that make reasonable adjustments will reap business benefits. The survey found a high degree of satisfaction with solicitors among once retained, but multiple barriers getting to that point, in particular among people with less-visible disabilities, such as not being asked what reasonable adjustments law firms could offer to make sure their services were more accessible.

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