

Horizon scanning report

(Covers the period 22 November 2019 to 9 January 2020)

The top five

The Conservative Party won the general election with a majority of 80. Its manifesto committed to set up a Constitution, Democracy and Rights Commission to look again at the relationship between the Government, Parliament and the courts; the functioning of the Royal Prerogative; the role of the House of Lords; and access to justice for ordinary people. The manifesto also committed to re-examine judicial review, establish a Royal Commission on the criminal justice process, and to pass and implement a Victims' Law that guarantees victims' rights and the level of support they can expect. In the run up to the election, both the Law Society and Bar Council challenged political parties to improve access to justice.

Australasia's foremost legal education provider is to enter the market by training 'hundreds and eventually thousands' of aspiring solicitors. The College of Legal Practice revealed plans to 'Uberise' solicitor training by providing fully digitalised preparatory courses for the SQE. Students will learn at home and work. The college is a subsidiary of the not-for-profit College of Law Australia and New Zealand, which trains over 5,000 lawyers a year. It has partnered with Dallas, Texas-headquartered Barbri, which prepares candidates for the US bar exams. ABS and 'new breed' law firms are initially in its sights. The College says it plans to undercut existing equivalent courses by 25-50%. Meanwhile, a consortium of six city law firms have engaged BPP to prepare trainees for the SQE.

The SRA has dropped its proposed reforms to PII meaning that the minimum level of cover will remain at £500,000. It said consultation responses had indicated that insurers might not reduce premiums, or firms might not lower their cover, or would top up their cover meaning costs increased. The ABI, Law Society and the LSCP had all opposed the plans. However, the SRA is to continue working on three specific issues: how it can make it easier for firms to close in an orderly way, including reviewing the SRA successor practice definition; exploring what should be in the scope of cybercrime cover and working with insurers to support the development of products; and reviewing the participating insurers agreement, with a view to updating it for the 2020/21 indemnity year.

A report by TheCityUK concludes tech is a key element of growth in UK legal services, while investment deriving from market liberalisation and alternative providers increasingly linking up with law firms will boost the lawtech sector. The report claimed that the Big Four accountancy giants had brought added competitive pressure and that Brexit should not affect the UK's status as the world's dispute resolution jurisdiction of choice. Meanwhile, a Law Society study of the UK's lawtech performance compared to global rivals found that London is fast becoming a hub for innovative start-ups. Although it still lags behind fintech, investment in companies trying to innovate is pushing lawtech to grow.

A report released by the American Bar Association's (ABA) Center for Innovation has called for U.S. jurisdictions to consider new approaches to regulation to increase access to justice. The recommendations are under review by the ABA House of delegates, where if approved they will be passed as a resolution, supporting the revision of existing structures. The report supports reform in three areas: new categories of legal services providers; fee sharing; and new approaches to policies on the unauthorised practice of law.

Political developments affecting the justice sector

Professor Julia Black was awarded a CBE in the New Year Honours list for services to the study of law and regulation. Controversially, Alison Saunders, the former Director of Public Prosecutions, was made a dame. Gillian Guy, chief executive of Citizens Advice, also becomes a dame while Bob Neill MP receives a knighthood.

The date of the next Budget has been confirmed as 11 March. The Chancellor said the Budget will set out ambitious plans to unleash Britain's potential, level up across the UK and usher in a decade of renewal.

The Crown Prosecution Inspectorate (CPSI) review of record low rape convictions found a justice system "close to breaking point" due to cuts. But it rejected claims prosecutors unfairly select the cases they charge. The government said the findings were "deeply concerning" while women's groups said the review failed to explain "woeful" conviction rates. There were a record 58,657 allegations of rape in the year up to March, but only 1,925 successful prosecutions - the lowest number since records began in 2008. It has led to accusations that the CPS is being too "risk averse" and only bringing cases which are easy to win to court. However, the CPSI concluded fewer rape cases are being referred by police to prosecutors - a fall of 23% - and police are taking longer to investigate them. Another report by CPSI found that the CPS disclosure of evidence is still sub-standard; while finding evidence of continuous improvement, it concluded there was still 'a long way to go before an acceptance standard is reached'.

The Divorce, Dissolution and Separation Bill has been reintroduced to Parliament following the General Election. It represents the biggest shake-up of divorce laws in half a century, and in particular will allow 'no fault' divorces. Currently, one spouse has to make accusations about the other's conduct, such as 'unreasonable behaviour' or adultery, or otherwise face years of separation before a divorce can be granted – regardless of whether a couple has made a mutual decision to separate. The new law will enable one spouse – or the couple jointly – to make a statement of irretrievable breakdown. It will also stop one partner contesting a divorce if the other wants one – which in some cases has allowed domestic abusers to exercise further coercive control over their victim.

The UK has fallen six places down the global rankings for gender equality, from 15th to 21st place. The World Economic Forum (WEF), which assembles the rankings, said so little progress had been made in tackling the problem that it would take 100 years to close the global gender gap. The WEF said the UK performed poorly because women were sparsely represented in politics (although a record 220 women were elected to parliament in the recent general election) and men on average were paid a lot more than women.

Lady Hale, outgoing President of the Supreme Court, has warned against the introduction of politicians appointing the UK's top judges. UK Supreme Court judges are appointed on legal experts' advice, whereas in the US the President can nominate them. Her intervention followed the Conservative's manifesto pledge to review the "relationship between the government, Parliament and the courts".

Dominic Cummings has called for changes to how government works, saying there are "profound problems" with how decisions are made. In a blog post, he said the civil service lacked people with "deep expertise in specific fields", including data scientists, software developers and economists. However, the civil servants' union said that recruiting world class experts had been hampered by pay rates.

Regulatory and wider policy developments

The SRA's new rulebook went live on 25 November, but it had to suspend rules that would allow solicitors to operate from immigration firms regulated by the Office of the Immigration Services Commissioner (OISC). Solicitors working in SRA-regulated firms are exempt from OISC regulation, but if they are not working in such practices, OISC requires them to apply to be authorised. If approved, they act as an OISC-registered adviser rather than as a solicitor. OISC has been worried about the overlap between its regime and the new SRA rules.

The SRA's digital logo is to be disconnected from Google analytics temporarily in an effort to appease solicitors' concerns about data protection and privacy laws. The SRA has insisted the logo complies with the law and all SRA-regulated firms were required to display the digital logo on their websites from 25 November. George Gardiner, of London business firm Gardiner & Co, a solicitor who is publicly refusing to implement the logo, has formally asked the Information Commissioner's Office (ICO) to rule the scheme unlawful. The complaint asks the ICO to order the SRA to stop mandating the badge and for each law firm that has implemented the badge to immediately cease doing so.

The LSCP has criticised the SRA's proposals to improve criminal advocacy standards, which it felt were not robust enough. It called on the SRA to stipulate that any advocate who wishes to work in the magistrates' court and upwards should be assessed in witness handling – a move the SRA had rejected because it felt the problem was in the higher courts. The Panel also suggested there was a lack of clear standards for consumers to know what quality advocacy was and what they should expect from an advocate. Equally, it said judges had no clear guidance on what to do when they see poor advocacy.

The SDT has promised to make 'open justice' central to its response to requests from non-parties for access to papers used at disciplinary hearings. An independent analysis found that in 11 of 14 cases where non-parties have applied for disclosure since 2017, the SDT has refused the request. The move follows a ruling by Lady Hale in the Supreme Court, which said the default position should be that the public be allowed access not only to the parties' written submissions and arguments, but also to the documents placed before the court. The SDT is consulting on changes to its policy.

Following an annual BSB review, Chambers in London must pay pupil barristers at least £18,866 a year from 2020, while pupils outside of London will receive a minimum of £16,322. The rates apply to all chambers and BSB-regulated entities. Last year the BSB announced a minimum award for pupils in line with the Living Wage Foundation's hourly rate recommendations.

In her inaugural speech as chairwoman of the Bar Council, Amanda Pinto, QC, criticised unqualified legal advisers such as McKenzie Friends, stressing that people should be represented by trained, regulated individuals. She also sounded caution about the use of AI in the courtroom focusing on the need for justice, fairness and equality. She said: "Replacing judicial decisions, which involve an evaluation of the merits of a case and the exercise of discretion, with an algorithm is not justice."

Lady Hale has predicted that half of judges will be women by 2033. She challenged Lord Sumption, who retired from the Supreme Court last year, who in 2015 suggested that gender equality among the judiciary should not be rushed as it would discourage men from applying, and said it could take 50 years to get parity with men on the bench.

A whistleblower has alleged that the Financial Ombudsman Service is in disarray.

Among the claims are that consumers sending complex complaints can wait 10 months before a file is examined and that case handlers are resolving 1.7 cases per week against a target of 4.5. The FOS has disputed the claims saying that 80% of cases are resolved within six months. Guardian Money reports that several staff have turned whistleblower in a bid to get the Financial Conduct Authority to take action.

Money Saving Expert (MSE) has released a new report on reducing the ombudsman sector standard eight-week timeframe for first-tier complaints handling. According to MSE's own survey conducted by YouGov, 89% of people believe that they should have to wait four weeks or less to refer a case to an ombudsman scheme, with 50% saying it should be no more than two weeks. The report suggests that making this change would reduce consumer frustration and incentivise firms to take fast and effective action.

Assets and contracts created with blockchain-type encryption technology have validity under existing English law, the UK jurisdiction taskforce of the LawTech Delivery Panel has concluded. In a statement it said that cryptoassets can be treated in principle as property; and that smart contracts are capable of satisfying the requirements of contracts in English law and are thus enforceable by the courts. The statement was widely welcomed as providing legal certainty to a fast-growing sector of the economy.

Analysis by Legal Futures shows a strong performance by listed law firms in 2019. Regional law firm Knights' share price has doubled since June 2018 following a series of acquisitions. Burford Capital, which faced a short-selling attack in 2018, saw a small recovery in its share price to 708.5p from a low of 605p, but well below its peak of 2040p.

Market developments

Josh Browder, the creator of 'DoNotPay', an artificial intelligence-powered chatbot that fights parking tickets, delayed flights and unfair charges, has launched **a new tool that helps the public get to grips with complex license agreements.** The spin-off tool, 'DoNotSign', lets users upload, scan or copy and paste the URL of any online license agreement and uses AI to identify legal 'loopholes' and potentially questionable clauses.

A leading expert has suggested **investors are poised to buy into the legal services sector to capitalise on recent regulatory changes,** with corporatised law firms (those converted to an independent commercial company) best placed to benefit. John Llewellyn-Lloyd of Arden Partners also forecast an unprecedented level of consolidation that would result in half of mid-sized law firms disappearing through mergers and acquisitions in the next two years.

Magic circle firm Allen & Overy has partnered with a practice based in Shanghai, saying the Chinese market is a 'global strategic priority'. The Shanghai Bureau of Justice has approved joint operations between Allen & Overy and Shanghai Lang Yue Law Firm. The practice will be known as Allen & Overy Lang Yue (FTZ) Joint Operation Office and will operate in Shanghai's free trade zone. The joint enterprise will provide clients with domestic and international legal services covering M&A, private equity, venture capital investments, capital markets, regulatory advisory and compliance.

Deloitte has become the latest firm to establish a lawtech incubator. It has selected 14 start-ups after evaluating 400 businesses, including an app store and AI for contract drafting.

In a significant departure from previous lawtech incubator schemes, Deloitte Legal has said it will become a user of products and services offered by the chosen start-ups.

Market intelligence and research

A survey of recent home buyers found 19% uses online conveyancers. This was more so among young people – 30% using one. 58% of the sample shopped around and 31% used a search engine, although 45% said they had used the same lawyer ‘for years’. Researchers found that 23% were charged a fixed fee higher than the one originally quoted. Consumers gave the different elements of their conveyancing services high satisfaction ratings – the lowest, for keeping them updated on the progress of the transaction was 73%.

PwC’s annual legal survey has found Lawtech is increasingly popular with firms but investment in technology and digital training remains low. According to the survey, almost 60% of UK firms have now introduced, or are in the process of introducing, technology such as smart contracts, automated documentation or mobile apps, a 14% increase on last year. However, average capital investment in emerging technology is ‘relatively limited’ at just £579,000 a year among top-100 firms. Digital training is also not widespread, with only a quarter of legal sector workers being ‘upskilled’ by their employer.

A study on strategic workforce planning by the Institute for Employment Studies commissioned by the Law Society suggests a **4% fall in employment in legal jobs over the next decade**. Looking at the impact of a more deregulated environment, tougher commercial pressures and technology, the analysis suggests numbers of legal professionals and associates will continue rising by 2% a year, but the number of legal secretaries will fall by two-thirds and numbers of other office support staff will fall by a quarter.

Analysis by the FT has shown that women are still underrepresented at senior levels of the largest law firms. While more women practise law than men, and just under half of mid-ranking lawyers in the firms sampled were women, only a fifth of partners were female. The situation with full equity partnerships was even worse. Further, most firms only increased the proportion of women partners by a percentage point or less year on year.

Academics have suggested that City firms risk breaking rules with onshore centres by not making it clear to clients where the work is being done. The academics from Birmingham University and UCL also said that in some offices people described legal professionals were working on zero-hours contracts. The study was based on 25 interviews with lawyers at onshore offices in the first research of its kind.

A study by Birmingham City University of online posts by McKenzie Friends found many are giving “biased and misleading” advice to vulnerable family litigants. Researchers used linguistics software to analyse discussions using threads from Facebook groups and open public forums. The authors called for a more regulated environment to protect vulnerable people in these cases, with increased transparency to make sure people knew the information they were accessing and the legal qualifications of those advising them.

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 [○]	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>									
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	£35.2bn	
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	£3.5bn	£3.7bn	£4.1bn	£4.2bn	£4.7bn	£5.2bn	£6.6bn	
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%	60%

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