

# Horizon scanning report

(Covers the period 16 October to 10 November 2017)

## The top five

### **The Ministry of Justice has published the job advertisement for the next LSB Chair.**

Writing an introductory message, the Lord Chancellor said that “*we need a modern, regulatory framework which is effective, proportionate and flexible and in which the consumer and profession have confidence*”. Some media outlets, perhaps inaccurately, interpreted this as leaving open the possibility of a review of the Legal Services Act.

### **The OLC published its annual report and appointed a new Chief Legal Ombudsman.**

The media focused on different aspects of the annual report: the Chief Legal Ombudsman’s acknowledgement that performance needs to improve; the first set of unqualified accounts for three years drawing a line under past governance issues; and cost of the service reducing by £1.2m. Rebecca Marsh will start as new Chief Legal Ombudsman in January. Ms Marsh is currently the executive director of operations and investigations, as well as deputy ombudsman, at the Parliamentary and Health Service Ombudsman.

### **Appleby, a global offshore legal services provider, is at the heart of the ‘Paradise Papers’ leak of millions of documents relating to its clients’ financial dealings.**

Appleby is not an SRA-regulated law practice, but employs solicitors regulated by SRA. Some wider context for this story is increased scrutiny by HMRC on professional advisers and their regulators in England and Wales in relation to tax avoidance schemes.

### **DCLG issued a call for evidence on improving the home buying and selling process.**

Of particular note, the government is considering a ban on referral fees between estate agents and conveyancers. It is also asking for views on whether the same conveyancer could act for both buyer and seller subject to conflicts of interest being managed (this is permitted for licensed conveyancers but not solicitors). DCLG also wishes to look at how competition can be improved and how digital technologies can be harnessed. A consumer experience survey found 85% of buyers were satisfied with their conveyancer, although this was lower than satisfaction with other actors in the conveyancing process. The survey found that those experiencing delays held the other side’s conveyancer responsible. Faster service from lawyers was the main improvement that consumers wanted to see in the process.

**LSB action:** *We will submit a short response to the call for evidence.*

### **The number of practising solicitors in England and Wales has reached another all-time high passing the 140,000 mark for the first time.**

There are now 15,000 more solicitors than five years ago. However, sector consultants have warned that expansion cannot continue indefinitely. Tony Jomati suggested that growth in numbers in large firms in particular may be unsustainable in the face of static profits and pressures on fees.

## Political developments affecting the justice sector

In a written statement to Parliament the **Lord Chancellor committed to a review of legal aid reforms**. A public consultation will examine limits imposed on the scope of legal aid for family, civil and criminal cases, the working of the exceptional case funding scheme, changes made to legal fees and the introduction of evidence requirements for victims of domestic violence and child abuse. It will also look into the introduction of the mandatory telephone gateway for legal aid applications, changes to the rules on financial eligibility and caps on put upon the subject matter of disputes. The review is due to conclude “before the start of the summer recess 2018”.

The Ministry of Justice has published a post-legislative memorandum on LASPO. The memorandum states that the **implementation of LASPO did not lead to increased take-up of mediation, as anticipated, but instead the opposite occurred with numbers attending mediation sessions falling**. The document also highlights an increase in litigants-in-person in family proceedings. In 2012-13 42% of litigants were unrepresented, rising to 64% in 2016-17.

**The chair of the Justice Select Committee, Conservative MP Bob Neill, believes that “budget pressures” and an “unwillingness to listen to professionals” meant changes to legal aid were rushed through and went too far.** Neill said the government could no longer “treat the law like a commodity” and that he thought cuts to legal aid were likely to turn out to be a false economy.

The latest national risk assessment of money laundering and terrorist financing, produced jointly by HM Treasury and the Home Office, has concluded that **legal services continue to be at high risk of attracting criminals intent on money laundering, but are not considered to be a target for terrorist financing**. Although some legal service providers involved in money laundering were complicit, most of such cases involved people who were “either wilfully blind or negligent”. Areas judged to be at greatest risk of exploitation by criminals were trust and company formation – often to hide beneficial ownership – conveyancing and client account services.

A director of the National Crime Agency (NCA) has told solicitors that the **legal profession is worse than any other financial services sector in reporting money laundering suspicions**. The total annual number of Suspicious Activity Reports from law firms was 3,500, a 10% decline on the previous year. Half of them were about the property market.

**DCLG has issued a call for evidence on regulating letting and managing agents in wake of abuses in the leasehold market.** This comes in the context of a spike in PII claims against conveyancers in relation to ground rent clauses. One option being considered is requiring letting and managing agents to become members of a relevant professional body. A variation of this option is for the professional body to be overseen by a regulatory body established or approved by government. A third option is to create a new regulatory body.

**The government has unexpectedly reversed its opposition to a ban on cold-calling by claims management companies.** Speaking in the report stage of the Financial Guidance and Claims Bill, the Lords minister said that the government had listened to peers’ concerns and officials had now been asked to consider the evidence for implementing a ban.

A report by the House of Lords constitution committee has said the government and senior judiciary must work with the legal profession to bring about a 'significant cultural shift', particularly in law firms, to **encourage more solicitors to apply for judicial appointment**. The committee concluded that a fresh recruitment problem has emerged because of the

reduced attraction of becoming a judge. The committee also asks the Lord Chancellor and Lord Chief Justice to examine the 'continuing value' of the long-standing convention that prevents full-time judges from returning to private practice.

**The Judicial Appointments Commission is to publish an unprecedented forward programme for appointing judges** in a bid to boost the appeal of the bench to candidates from all backgrounds. The five-year plan, running from 2017-2022, will enable aspiring judges to identify 'clear pathways' to office and help candidates decide which roles to apply for and when.

HMCTS has launched a new consultation on **flexible operating hours pilots** which accepts the possibility that extending the hours of courts, although desirable, might have to be abandoned altogether.

**The government is planning to create a UK-wide £650m "legal services marketplace" from which the public sector will procure commercial legal services.** It will cover central government departments and their associated bodies, including the devolved administrations in Scotland, Wales and Northern Ireland, along with the wider public sector, ranging from health and education bodies and local and regional government organisations, to emergency services and third-sector organisations.

**A review of ombudsman schemes by Martin Lewis has described the ADR landscape as a "complex maze, full of inconsistencies".** Mr Lewis suggested one of the biggest problems is that remedies are not being implemented, mainly because most ombudsman services lack the powers to enforce them. He wants all ombudsmen to be created or underpinned by statute and given greater powers to enforce their rulings. Mr Lewis believes that, ultimately, there should be a single compulsory ombudsman overseeing multiple sectors so that consumers can call one number and be put through to the relevant branch.

**The Department for Health is consulting on reforming health and care professional regulation.** The consultation asks some key questions which are of interest to our vision for legal service reform. These include: what professions should be statutorily regulated and what criteria should be used for making such decisions; what number of regulators is appropriate for health and care professionals; should there be consistent and flexible range of powers across the regulators; and should there be increased joint working, shared functions and shared services amongst the regulators. It also says that there is research which suggests that efficiencies accrue for a regulator when the registrant base is between 100,000 and 200,000 (a far greater number than most of the legal regulators).

## Regulatory and wider policy developments

**The Legal Services Act had its 10<sup>th</sup> anniversary on 30 October sparking commentary on whether it has been a success.** The following quote, from Iain Miller at Kingsley Napley, is apt: *"The question remains has the LSA delivered on its promise of radical change. Below is a timeline of events over the last 10 years. Many of these are momentous but we have not yet seen an Uber or Dyson moment when a new type of legal provider disrupts the market. However, this may be the calm before the storm. The rise of legal tech, such as artificial intelligence and blockchain, suggests that the moment of true disruption is coming. When it happens, the England and Wales regulatory model fashioned by the LSA is better placed to welcome these new providers within the regulatory tent. In other markets this disruption may well put the regulatory framework under strain."*

**Sir Bryan Leveson has been made head of criminal justice.**

**The LSB has launched its consultation on the Internal Governance Rules.** Media reporting on our consultation has focused on the “steady stream of disagreements” between legal regulators and representative bodies meaning the rules may need to be rewritten.

**The Law Society has published a discussion paper on the standard of proof that should be used in misconduct hearings ahead of an expected review by the SDT.** The paper puts the arguments for and against switching to a civil standard. It raises as another possibility the American Bar Association model rule, whereby the standard of proof is ‘clear and convincing evidence’ but the *burden of proof* switches between the prosecutor and respondent depending on the seriousness of the potential penalty at stake.

**The president of the Family Division has set aside 21 fraudulent divorce petitions produced by a disbarred barrister.** Sir James Munby found that, in each case, the underlying proceedings were “tainted by deception in relation to the address of either the petitioner or the respondent, and the decrees, where decrees have been granted, were obtained by deception”.

**Locke Lord, a US law firm, has received the largest ever fine handed out by the SDT - £500,000 - and also become the first firm to be found to have lacked integrity in its conduct.** The tribunal approved an agreement between Locke Lord and the SRA. Locke Lord’s London office had admitted failing to prevent one of its solicitors from “involving himself – and holding out the firm as being involved – in transactions that bore the hallmarks of dubious financial arrangements and investment schemes”.

**A freedom of information request by The Times has revealed that the Crown Prosecution Service used taxpayers' money to pay off lawyers found guilty of misconduct and handed complex cases to prosecutors who had been criticised by judges in open court.** In the past five years it has handed out £444,573 in voluntary redundancy payments to nine staff found to have committed misconduct, including three senior prosecutors. In total 123 lawyers at the agency have been found guilty of unspecified misconduct, but only 15 were dismissed. Bob Neill, chairman of the justice select committee, said that the allegations “confirmed a growing set of suspicions about a lot of CPS work”.

**The BSB has decided not to extend the cab-rank rule to public and licensed access cases.** This position was universally supported by stakeholders during the consultation phase. Respondents argued it would discourage barristers from offering public access work.

**The BSB has decided to introduce compulsory registration of youth court barristers, despite fierce opposition from the Bar Council.** However, the BSB shied away from demanding compulsory training, as recommended last year by the Taylor report, arguing that the market for youth advocacy was too “fragile” for additional regulation.

**Delegates at the annual Bar Conference have warned of a supermarket-style price war and risk of collusion if the BSB’s proposals to improve market transparency proceed.** The BSB has proposed two options for displaying prices: each barrister publishes prices for their three most common types of case; or chambers publish information on price ranges, indicative fees for standard work or average fee.

A solicitor at a specialist road traffic defence law firm **has alleged that RSS, a company employed by a large number of police forces to assist with road traffic prosecutions, has been carrying out reserved activities without authorisation.** The issue has received significant media coverage, with the Mail on Sunday speculating that thousands of motorists

could see their speeding convictions overturned if RSS were found to have acted unlawfully. The SRA has said it is looking into the matter.

**The Personal Support Unit, a charity which supports litigants-in-person, has reported a five-fold increase in work since the legal aid reforms were made.** The organisation now provides for 60,000 litigants every year at one of its 22 sites across England and Wales. 55% of clients are dealing with family matters, 40% are unemployed and 22% do not speak English as their first language.

**An interim report by the Civil Justice Council has concluded that “ADR has failed to achieve the integral position in the civil justice system that was intended and expected for it at the time of Woolf”.** It says that measures to encourage mediation – signposts, threats of sanctions and professional obligations on lawyers – are well crafted and thought-out, but ultimately the system, as a whole, ‘is not working’. The fundamental problem is that ADR has not become familiar to the public or culturally normal. The report calls for a debate on practical solutions, including the case for introducing compulsory mediation.

## Market developments

**In a human against machine challenge an artificial intelligence system roundly beat lawyers in a competition to predict whether PPI mis-selling complaints would be upheld or rejected by the Financial Ombudsman.** The CaseCrunch system achieved an accuracy rate of 86.6 per cent, compared to 62.3 per cent for the lawyers. CaseCrunch said the main reason for the machine’s winning margin seemed to be that the network had “a better grasp of the importance of non-legal factors”, such as age, than the lawyers.

**A series of new artificial intelligence products have hit the market.** Robot Lawyer LISA has launched a suite of property tools which create legally binding business leases, residential leases and lodger agreements. Leading defendant law firm Keoghs has launched an AI driven service, called Lauri, which handles work that is currently done by its lawyers. Lauri is initially for “avoidable litigation” cases – generally standard, low-value claims like whiplash – but Keoghs has ambitions to expand its reach significantly.

**LGSS Law, the ‘social enterprise’ ABS owned by three local authorities** (Northamptonshire, Cambridgeshire, Central Bedfordshire), is set expand dramatically by merging with the shared legal team of Westminster City Council and the Royal Borough of Kensington & Chelsea. Since its launch in April 2015, LGSS Law’s turnover has increased by 30%, or £2.2m, to almost £8m.

**Warwickshire County Council has become the latest local authority to launch an ABS** to expand the work it already does for other public bodies. The 90-strong team already provides legal services to Warwick District Council, West Mercia and Warwickshire Police Alliance, Warwickshire Police and Crime Commissioner and Herefordshire Council, as well as over 200 schools and academies. These external clients generated £1.5m in income in the last financial year, a third of WLS’s total income.

**Singapore has begun marketing itself to UK law firms** wanting to access Asia’s lawtech start-up community, as well as UK start-ups wanting to expand beyond these shores, with what it says is south-east Asia’s first lawtech accelerator. The Singapore Academy of Law (SAL) has launched a ‘future of law innovation programme’ (FLIP) that also includes pre-seed funding and government grants for companies basing themselves in the country.

## Market intelligence and research

Research for the SRA by University of Leeds and Newcastle University Business School, covering data for solicitors who entered the profession between 1970 and 2016, has found **white men are nearly six times more likely to become a law firm partner than black, Asian and minority ethnic women**. According to the figures, around half of solicitors are now women. The proportion of BAME solicitors over the last three decades has risen from 0.25% in 1982 to 16% now. A third of partners are women. White men are over three times more likely to become a partner in large corporate firms than white women, and six times more likely than BAME women.

The LSCP published a briefing on its Tracker Survey highlighting that **only 6% of consumers found price information on the website of the law firm they used**. The number of consumers who said it was easy to compare providers fell from 57% in 2016 to 48% in 2017. The LSCP said the survey showed “an unchanged sector, which is slow to respond to consumer need” and called on the regulators and the LSB to work robustly towards implementing the transparency measures recommended by the CMA.

The Legal Ombudsman has published new research and top tips that can help legal and claims management professionals prevent complaints escalating. Its new **Language of Complaints research highlights how the type of language used in the complaints process can affect customer decisions**. Among the tips are reminders to avoid jargon and pretentious language, acknowledge any stress or inconvenience caused and be clear with the client. The Legal Ombudsman also reminds professionals that they should not be afraid to apologise and say sorry without caveats and conditions if they have made a mistake.

**PwC’s annual law firm survey has concluded that “fundamental market change is on the horizon” for the largest law firms in the country**, with the possibilities of technology the driving factor and new business structures and external capital needed to accommodate them. It surveyed 55 of the top 100 firms and found that many were not keeping pace with cutting-edge technologies, or more crucially with growing client expectations.

**Economic forecasts issued by the Law Society suggest that productivity growth across the legal sector may double by 2038 due to a growth in automation and the adoption of artificial intelligence**. The Law Society predicts these developments could lead to 20% fewer jobs but expects this to be offset by escalating demand for legal services.

**A LexisNexis Bellwether report has argued that law firms are facing a “pivotal moment” where they need to turn talk of improving efficiency into action**, with those that are seeing the competitive advantage. It said that while clients were demanding change, *“law firms appear to be in a holding pattern, pledging forward-looking action, while cleaving to traditional thinking, from hourly billing to old-school assumptions on what they believe is in their clients’ best interests”*. While 92% of lawyers said continued investment in technology was no longer optional, some 58% of firms were spending less than 5% of the turnover on legal tools, and 81% less than 10%. Half of lawyers considered their law firm’s efficiency to be average, with just 36% rating their firm’s efficiency to be above average.

Dr Daniel Newman, Cardiff University, has conducted ethnographic research into the **lawyer-client relationship in criminal legal aid work**. He found that, in interviews, lawyers gave a glowing description of their relationship with clients akin to a public service ethos. However, in contrast, lawyers under observation displayed deeply negative feelings toward their clients. While pleasant to a client’s face, lawyers were keen to communicate their distaste for the client when they were out of earshot.

