

Horizon scanning report

The 'top 5'

1. The MOJ announced the **abolition of employment tribunal fees** after the Supreme Court ruled them unlawful in a landmark case brought by Unison. There is evidence that the introduction of fees significantly reduced volumes of claims. The judgment is likely to have wider implications for justice policy. The shadow justice secretary has since called for an independent review of court fees.
2. **The Shadow Attorney General has accused the government of undermining the rule of law** by putting pressure on the SRA in its action against Leigh Day. An article on the front page of the Observer repeated allegations made by Leigh Day's defence team during the tribunal hearing that the SRA was using the case as a platform for lobbying the government for regulatory reform. The SDT has confirmed that publication of the judgment is expected in 'the latter half of September'.
3. The **Lammy Review** has found the criminal justice system is biased and discriminates in treatment of people from ethnic minority backgrounds. The report says individuals from these backgrounds do not trust the advice provided by duty solicitors when it comes to pleading guilty as they saw them as 'part of the system'. Recommendations include setting a national target for a representative judiciary by 2025 and establishing a system of online feedback on judges. Mr Lammy also called for experimentation with different approaches to explaining legal rights and options to defendants, for example giving people a choice between different duty solicitors, and earlier access to advice from barristers.

LSB action: *We will study this important report and consider if there is any further action that we need to take.*

4. Lord Thomas of Cwmgiedd, the outgoing Lord Chief Justice, used his final annual report to outline the judiciary's "nascent concern" that the **public interest too often gives way to the consumer interest in legal services regulation**. Lord Thomas indicated that the judiciary would in future take "a more structured approach" to engaging with the profession's representative and regulatory bodies "to make sure the constitutional position of the legal profession is properly understood and weighted accordingly as decisions are taken".

LSB action: *This is a useful reminder of the fact that we may need to make clearer that our public interest role is indeed central to the work we do such as consideration of rules changes or issuing guidance. I will be talking about these issues in some of the speeches I will be giving over the autumn starting with the Legal Symphony conference at the beginning of October.*

5. The **SDT has confirmed that it will consult on where to set the standard of proof** for proving allegations of misconduct against solicitors. The BSB is currently consulting on the standard of proof which it uses. A press statement alongside the SDT's response to the BSB's consultation said that it would 'remain the master of its own destiny in this

debate'. We have approved a rule change application from the Master of the Faculties to apply the civil standard in all conduct hearings (currently it still applies the criminal standard in the most serious cases).

LSB action: *Our published policy position is that the civil standard should be used and this is therefore a welcome development. We would need to consider any rule change applications in due course.*

Political developments affecting the justice sector

6. HM Treasury published a consultation on its **anti-money laundering** supervisory review asking for views on the draft Regulations for the AML oversight body, the Office for Professional Body AML Supervision (**OPBAS**). Certain approved regulators are supervisors and will fall under OPBAS. In its consultation response the Law Society said that the case had not been made for introducing OPBAS. We are engaging with OPBAS and have met with the team to discuss their plans.
7. Separately, HM Treasury announced that "independent legal professionals" would be captured by its **European Union Financial Sanctions Regulations 2017**. The existing regulations already placed an obligation on businesses to report to the Treasury if they were acting for anyone subject to financial sanctions, but enforcement action could only be taken against financial services firms.
8. A DExEU position paper said that the UK is seeking a 'close and comprehensive' framework of **civil justice cooperation** with the EU post-Brexit. It also confirmed the intention to incorporate into domestic law the Rome I and II instruments on choice of law and applicable law in contractual and non-contractual matters. The Law Society and Bar Council both welcomed the announcement.
9. The Lord Chancellor has set out proposals for calculating **the 'discount rate' applied to personal injury settlements**. Under proposed legislation, the rate will be set by reference to rates of return on 'low risk' rather than 'very low risk' investments as at present. The rate will also be reviewed at least every three years. The Association of British Insurers has welcomed the announcement.
10. HMCTS has started to accept **online probate applications** from personal applicants. The measure removes the need for people to swear an oath in person. The Law Society has welcomed the development, although warned about the risks of fraud and exploitation of vulnerable clients.
11. **Baroness Hale was appointed the new President of the Supreme Court**; she will replace Lord Neuberger in September. Addressing an audience in Belfast she suggested that the traditional division of the legal profession into solicitors and barristers is partly to blame for the **lack of female judges**. However, she made clear that she did not recommend ending the solicitor/barrister divide.
12. HMCTS has confirmed details for a **new pilot to extend court hours** from 8am to 8pm. Legal professionals have expressed concerns about the impact on diversity, especially on those with caring responsibilities. The Chairman of the Bar and the President of the Law Society have criticised the lack of consultation and expressed scepticism that the scheme will work. Some judges have also criticised the scheme.

13. The UK's biggest law firms may eventually be asked to reveal the pay gap between their biggest earners and other members of staff. Under government proposals the UK's biggest companies will have to reveal how much their chief executives are paid compared with 'the average worker'. As it stands, this proposal applies to only publicly listed companies but the Financial Reporting Council has been asked to draw up a voluntary set of principles for privately held businesses.
14. The Department for Communities and Local Government is consulting on plans to crack down on **unfair practices in the leasehold market** – including a ban on the sale of new build leasehold houses and tackling onerous ground rents. A barrister has suggested there could be a swell in negligence claims against conveyancers who failed to give advice on contract causes that permit increases in ground rents.

Regulatory and wider policy developments

15. CILEx Regulation has submitted an application to LSB to become a licensing authority. We have twelve months to decide on whether to grant the application. If we do, it then proceeds to the Lord Chancellor for final approval.
16. The SRA published its 2017-2020 corporate strategy with five new strategic aims:
 - We will set and apply consistently high professional standards for the individuals and firms we regulate and make sure they are appropriate to meet the challenges of today and the future
 - We will make sure our regulatory requirements are proportionate, providing solicitors and firms the flexibility to innovate and better meet the needs of members of the public and businesses, while maintaining appropriate levels of public protection
 - We will increase the availability of relevant and timely information to help people make informed choices in the legal services market
 - We will make sure that our regulatory arrangements work as effectively as possible for the public, businesses, solicitors and firms in the context of constitutional developments within the UK and any new relationship with the EU
 - We will work better together and with others to improve our overall effectiveness, our responsiveness and the delivery of our regulatory functions
17. The LSCP's Chair has blogged that the SRA needs to put more consumer protections in place before allowing solicitors to practise from unregulated firms. The Panel also criticised the lack of economic analysis carried out by the SRA on the impact of the move and said information 'remedies' to ensure that people understand the risks of using such a solicitor may not be enough.
18. The **SRA reported that it closed 20 firms** from January to May, compared to 10 for the same period last year and there had been a "noticeable increase" in the size of firm. Separately the BSB reported that number of **barristers disbarred has doubled** over the last year.
19. A spate of cases involving solicitors being penalised for their **use of language in electronic media** has prompted the SRA to publish a warning notice on 'offensive communications'.

20. The Law Society has failed in its bid to strike out a negligence claim by a law firm that was the victim of a fraud after the details of another firm it had checked on the society's online '**Find a Solicitor**' (FAS) facility turned out to be false. The case turns on the question of whether the Society can be held liable for the accuracy of information on its website as to who is regulated by them.
21. New **judicial diversity** statistics show an almost non-existent increase in the number of ethnic minority numbers on the bench.
22. **Only a quarter of all partners in the UK's 200 largest firms are female**, according to data from The Lawyer magazine. While the proportion of female partners across the UK 200 rose last year, it was only by a single percentage point.
23. The **Claims Management** Regulator is 10 years old. Its anniversary report reveals that CMCs have earned over £6bn in the past decade, although the number of CMCs has shrunk from a peak of 3,218 to 1,388 in 2017.
24. Lord Justice Jackson has published his vision for **extending fixed recoverable costs** for all fast-track cases, as well as a new fixed-cost 'intermediate' track for certain claims up to £100,000. This is a scaling back of original proposals to apply fixed costs for all claims up to £250,000.
25. The sharp increase in **holiday sickness claims** has led the SRA to publish a warning notice reminding the profession of its obligations to make sure any claims they are handling are valid and have been brought in the right way. ABTA statistics show a 500 percent increase in holiday sickness claims in the last four years.
26. The Court of Appeal has criticised law firms which attract clients through adverts which suggest their previous solicitors may have **under settled personal injury claims**. Lord Justice Jackson said the civil justice system did not exist to 'service artificial claims stirred up by advertisements'.
27. The National Audit Office has published a study on **managing the costs of clinical negligence in trusts**. The recommendations include a call for NHS Resolution (previous NHS Litigation Authority) to work with legal services regulators to ensure that risks to its claims operations and to NHS resources are shared and addressed systematically. The study highlights that NHS Resolution has achieved significant savings from contesting unmerited or excessive claims and legal charges. However, data are not always shared with or addressed by relevant regulators.

Market developments

28. Pioneering price comparison website **Law Superstore has been acquired by reallymoving.com** after private equity investors decided to sell the business. The Law Superstore had struggled to persuade law firms to sign up. The relaunched business will focus on generating leads rather than solid instructions.
29. Slater and Gordon has announced plans to split off its UK operation to focus fully on the Australian business.

30. Edward Hands & Lewis (EHL), a Leicester-based law firm with 15 branches, has announced plans launch **a national network of franchised offices** next year.
31. 360 Law Services Ltd, which supplies unregulated legal services to SME clients worldwide via a virtual law firm using more than 100 consultant lawyers, has added an ABS to its group to offer regulated services to UK consumers. It is the **first ABS to have a regulated and unregulated practice within the same group**.

Market intelligence and research

32. A report for PwC compiled by City UK reveals that **legal and accountancy businesses and their workers generated £15.5bn in taxes** last year, representing 2.5% of UK tax receipts. The sector collectively generated employment of 693,000.
33. The Portland Group's annual English Commercial Court report shows that **UK litigants represented only 28% of commercial court users** in 2016-17. Russia, Kazakhstan, India and Switzerland were the other main countries of origin.
34. The Intellectual Property Office has published **a review of the performance of the UK patent system**, considering how companies patent in the UK, who patents in the UK, and how the UK system compared to other countries. Legal services and the enforcement environment were mostly seen as high quality and were highly rated, however they are seen as expensive compared to other jurisdictions. The high cost of legal advice was seen as a barrier for small firms. Interviewees suggested that increasing understanding of the role of patent attorneys and the wider benefits of patenting would support SMEs in their usage of the patent system. Our small business legal needs research contains information on intellectual property problems, which we have previously discussed with the IPO. When the next edition is published later in the year we will again bring the revised data to the attention of the IPO.
35. A Law Society annual PII survey revealed that more than **a quarter of law firms were targeted by fraudsters last year**. Spam emails and phishing were the most common tactics used. It also found that nearly three-quarters of law firms renewed their PII cover with the same insurer, with 85% using the same broker.
36. Analysis by The Lawyer magazine, suggests the **top 200 UK law firms increased overall revenue** by 73% between 2007 and 2017, from £13.5bn to £23.5bn. Over the same period, the total number of lawyers working for those firms rose by 44% and the highest level profit per equity partner has increased from £1.62m to £2.02m.
37. Analysis of Land Registry data by Search Acumen has shown that **conveyancing work has fallen to its lowest level since the middle of 2013**, and the number of firms actively doing the work has hit a new low. While the top five firms have been "insulated" from the lull in the market, the smallest operators outside the top 1,000 conveyancing practice have suffered the most.

Annex B – Market intelligence and research

NUMBERS IN BLUE AND ITALICS ARE NEW DATA SINCE LAST BOARD MEETING

Indicator of success	Source	2011	2012	2013	2014	2015	2016	2017
<i>Ensuring independent, effective and proportionate regulation</i>								
LSB expenditure	LSB	£4,734k	£4,578k	£4,264k	£4,266k	£3,921k	£3,587k	£3,525k
LSB levy per authorised person	LSB	£34.38	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83
Public trust lawyers to tell the truth	LSCP	47%	43%	42%	43%	47%	42%	45%
Public confident consumer rights protected	LSCP	51%	49%	46%	46%	50%	46%	48%
<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	19%	22%	22%	24%	25%	25%	27%
Use of comparison/feedback sites: Individuals	LSCP	1%	1%	1%	1%	2%	2%	2%
Ease of shopping around: Individuals	LSCP	51%	57%	55%	54%	57%	57%	47%
Satisfaction with value for money: Individuals	LSCP	57%	58%	57%	63%	61%	61%	61%
Providers publish prices on websites	LSB						18%	
Consumers who do nothing when dissatisfied	LSCP		42%	44%	44%	42%	35%	49%
Public confidence in complaining about lawyers	LSCP	51%	49%	44%	45%	48%	43%	44%
No action when have legal issue: SMEs	LSB			8%		9%		
Levels of shopping around: SMEs	LSB							
Ease of finding provider: SMEs	LSB					25%		
Lawyers perceived as cost-effective: SMEs	LSB			12%		13%		
SMEs who do nothing when dissatisfied	LSB							
<i>Increasing competition, innovation and growth</i>								
UK wide legal services turnover (uninflated)	ONS	£25.7bn	£26.4bn	£27.2bn	£29.3bn	£30.5bn	£32.3bn	£31.8bn
Net exports of UK legal services	ONS	£3.0bn	£3.1bn	£3.3bn	£3.9bn	£4.3bn		
Non-UK litigants using Commercial Court	Portland		70%	71%	77%	63%	66%	72%
Number of active ABS	ARs	1	68	236	373	618	837	
Level of service innovation (over 3yrs)	LSB					28%		
Regulation seen as barrier to innovation	LSB					24%		
Firms state reduced prices in last 12 months	LSB						4%	