

Horizon scanning report

(Covers the period 15 October to 21 November 2018)

The top five

The draft Brexit agreement would maintain the ability for UK lawyers to operate in the EU as now, and vice versa, during the transition period that runs until December 2020. The outline political declaration on the future relationship between the UK and EU published alongside it also identified “appropriate arrangements on professional qualifications” as one of the aims for the post-Brexit trade deal to be negotiated after 29 March 2019.

The High Court dismissed the SRA’s challenge against the SDT’s decision in the Leigh Day case. In a unanimous decision, the judges said that dissatisfaction on the part of the SRA with the tribunal’s decision could not of itself be grounds for a successful appeal. The costs of the prosecution, which were at least £9m, have yet to be decided for the latest hearing. The SRA has decided not to appeal the judgment.

The Solicitor General launched a new Public Legal Education vision statement. The statement creates a shared vision for the PLE community to aspire to which will help drive forward legal education initiatives. The statement reveals 7 goals for where PLE might be in 10 years’ time. It focuses all on one common goal – to encourage more people to help educate the public about their legal rights and responsibilities. The SRA is one of the bodies listed which has contributed to producing the statement.

The Scottish Review of the Regulation of Legal Services reported. The central recommendation in Esther Robertson’s report is a single regulator for all providers of regulated legal services in Scotland, which is independent of those whom it regulates and of Government, and accountable to the Scottish Parliament. The new regulator would set up a single new body to handle service and conduct complaints about lawyers. The report also recommends the introduction of entity regulation enabling ABS that would not need to be majority lawyer owned. Another recommendation is that the term ‘lawyer’ should be a protected title. The next stage will be a formal Scottish government response to the report.

The CMA launched a market study of the audit sector to examine concerns that it is not working well for the economy or investors. It comes amid growing concerns about statutory audits, in particular following the collapse of construction firm Carillion and the criticism of those charged with reviewing the organisation’s books, as well as recent poor results from reviews of audit quality. The market study will focus on three sets of issues: choice and switching; the long-term resilience of the sector; and the incentives between audited companies, audit firms and investors. Possible remedies of potential significance to legal services include restricting the Big Four audit firms from providing non-audit services to at least some companies as a means of dealing with conflict of interest issues. Another option is to break up the Big Four and allow each of the separated businesses to continue to provide both audit and non-audit services. The CMA is not planning to look at the regulatory framework in detail given the parallel Kingman review into the FRC. The CMA plans to consult on provisional views by the end of 2018 (when the Kingman review also concludes).

Political developments affecting the justice sector

Judges have expressed concerned that the rule of law was undermined by Lord Hain when he used parliamentary privilege to reveal that Sir Philip Green had obtained a court injunction to prevent media reporting of alleged harassment claims. Lord Judge, former Lord Chief Justice, said whatever people's views on Sir Philip, "every citizen has the right to go to an independent court". Sir Philip says he "categorically and wholly" denies the allegations.

The Treasury's Budget Document reveals that the departmental resource budget for the Ministry of Justice will shrink from £6.3bn in 2018/19 to £6bn in 2019/20.

Meanwhile, the capital budget will fall from £600m in 2018/19 to £400m in 2019/20 - and just £100m in 2020/21. On actual spending commitments, the Budget will fund construction of a new prison, provide £30m in 2018/19 to improve 'security and decency' across the prison estate and a further £21.5m would be invested in the 'wider justice system'.

The Budget Statement included an announcement to increase the capacity of the UK Regulators Network (UKRN). It highlighted that regulated sectors face shared challenges such as adapting to technological change, delivering future infrastructure and protecting vulnerable consumers. Regulators have pledged additional resources for UKRN to deliver a cross-sector project aimed at improving outcomes for vulnerable consumers. UKRN will publish a plan in spring 2019 outlining how it will improve collaboration between regulators.

In a speech the **Lord Chancellor said that making the profession more diverse could add billions to the economy.** He said that the problem with diversity in the law was not at the level of entrants to the profession but in the senior roles and leadership.

Judges have been awarded a 2 per cent pay rise despite the Senior Salaries Review Body's (SSRB) recommendation that they should be paid 32 per cent, or almost £60,000, more. The award, the biggest for ten years, is in line with that for other public sector workers. The Government also published the recommendations of a separate major review of judges' pay by the SSRB and said it would respond in full at a later date.

Organisations have responded to the Ministry of Justice consultation on the **advocates graduated fee scheme (AGFS).** The Bar Council said 'we are now at a pivotal point' and that advocates are 'seriously questioning' whether a career at the Bar is financially viable.

Counsel General Jeremy Miles AM has said that a Welsh jurisdiction and a devolved justice system are inevitable. He told the Legal Wales conference that the Legislation (Wales) Bill, to be introduced later this year, will be accompanied by a draft Taxonomy of Codes, which will aim to organise Welsh law into comprehensive codes by the subject areas devolved to Wales. He also announced plans to revamp the Law Wales website, which provides information about Wales' constitutional arrangements and law made in Wales. Separately, speaking at a National Assembly for Wales seminar, he called on law firms in Wales to embrace new technology before their business model is threatened.

The Ministerial Working Group on Future Regulation has held its first meeting.

Chairing the meeting, Business Secretary Greg Clark, outlined his commitment to building on the UK's exceptional reputation for regulation by ensuring UK regulators are ready for the industries of the future. The group, which will meet quarterly, will be responsible for: strengthening the Government's horizon scanning for emerging regulatory challenges; commissioning departments to develop regulatory reform proposals; promoting action by regulators to develop innovation-enabling regulatory approaches; seeking to resolve complex regulatory issues that cross sectoral, departmental or regulator boundaries; and driving the exchange of best practice in innovation-enabling approaches across Whitehall.

The Prime Minister's Council for Science and Technology has published recommendations on how to make the **UK regulations more favourable to innovation**. In responding, the Business Secretary has announced plans to establish a strategic horizon-scanning function that will support and challenge regulators to keep pace of developments in science and technology that will change the sectors they regulate. In an echo of the LSB's technology project the Council highlights that "*the timely examination of ethical and other societal concerns raised by some technological advances should inform regulatory design and ensure that stakeholders' views are understood early*".

The SRA has urged the government not to agree to the mutual recognition of other countries' legal qualifications in post-Brexit trade deals. It told the Department for International Trade that the recognition of professional qualifications should be assessed by the SRA on a case-by-case basis. The SRA commented as the department issued initial consultations to inform its approach to negotiations for free trade agreements.

Ministers have laid before Parliament new legislation to implement a **new, banded structure of fees for a grant of representation**, commonly known as a grant of probate. Following concerns during consultation the government has revised fees so they will never be more than 0.5% of the value of the estate. By raising the estate value threshold from £5,000 to £50,000, around 25,000 estates annually will be lifted out of fees altogether.

The government has announced that **flexible working hours will be piloted in the civil and family courts**, but following feedback from the profession not in criminal courts. Two courts in Manchester and Brentford will run the pilots for six months.

Regulatory and wider policy developments

Sam Younger CBE has been reappointed Chair of CILEx Regulation for a 3 year term.

Crispin Passmore is to leave the SRA at the end of the year. Richard Collins, director of strategy and resources, will now lead on education and policy, while Robert Loughlin, executive director of operations and quality, will oversee enforcement work.

The SRA has estimated that the SQE will cost between £3,000 and £4,500. Further, the overall cost of training, including assessment costs, could range from around £5,000 to £10,000 – significantly less than the legal practice course. The SRA has also pushed back the start date to autumn 2021 in response to feedback from universities and the profession. The SRA has also said it is likely to follow the BSB's lead by abandoning QASA. It told the annual conference of the Solicitors' Association of Higher Courts Advocates that it is considering bringing in a standardised assessment for solicitors wishing to obtain higher rights of audience, as part of its efforts to tackle 'concerns' over the quality of advocacy.

The BSB is consulting on a new three-year strategy. It proposes the following high-level aims: delivering risk-based, targeted and effective regulation; encouraging an independent, strong, diverse and effective legal profession; and advancing access to justice in a changing market. It also identified three key risks in the market: working cultures and professional environment inhibit an independent, strong, diverse and effective profession; innovation and disruption in the legal services market offer threats and opportunities for the profession and for the public; and affordability and lack of legal knowledge threaten access to justice.

The government has revealed what the **LawTech Delivery Panel** announced by the Lord Chancellor in July will be doing. It is to conduct a review of the context in which lawtech

companies do business and how they could best be supported. It has set up taskforces to examine regulation, ethics, commercial dispute resolution, education and training, investment and funding, and establishing the UK as jurisdiction of choice for lawtech.

Professor Richard Susskind has claimed that **machines will replace lawyers** if technology produces better or cheaper results because clients are ultimately interested in outcomes. However, Professor John Flood countered in a blog that people value trusted advisors and cautioned against a dystopian approach which measures work by its outcomes. Writing in his blog, Professor Richard Moorhead has suggested the legal profession will have to develop “cyber ethics” to cope with the very different issues that the growing use of technology is having on the practice of law.

Sir Geoffrey Vos, Chancellor of the High Court, has suggested that as legal advice is increasingly driven by artificial intelligence, **a mechanism will have to be introduced to inform clients whether they are being advised by a machine or a human lawyer**. While embracing online dispute resolution and blockchain, he said possible downsides were that much legal advice would be delivered remotely, the profession might become “over-commercialised”, human judges and fairness could be made obsolete, AI might cut the profits of lawyers, cyber-crime would escalate, and big data lead to rule of law abuses.

Mr Justice Robin Knowles has told the Law Society’s technology and law policy commission how the **need for an ethical and legal framework for AI** was met would determine whether the technology realised its true potential. He argued that the financial world had shown what could happen without such a framework in place. Lord Clement Jones, co-chair of the APPG on AI, told the commission that audit was required to make sure algorithms were conforming to such frameworks. Adrian Weller, of the Turing Institute, suggested that AI failures could have a much bigger impact than humans getting things wrong.

In a speech to the Professional Paralegal Register’s conference, the OLC chair said that the **Legal Ombudsman is working through its complaints backlog and should be back to ‘a decent system’ by the end of March 2019**. In her remarks Ms Goldwag observed that consumer expectations of how quickly complaints are handled are changing as a result of their interactions online and noted how technology raises difficult issues of liability.

The Financial Conduct Authority has confirmed plans to extend access to the Financial Ombudsman Service to more small and medium-sized enterprises. SMEs with an annual turnover below £6.5m and fewer than 50 employees, or an annual balance sheet below £5m will from 1 April be able to refer complaints to FOS. This means around 210,000 additional UK SMEs will be eligible to complain to the ombudsman service. The FCA has used LSB’s small business legal needs research as evidence to justify the move.

City lawyers have mooted the idea of requiring some prospective solicitors to get a ‘City specific’ background by embarking on ‘LPC or GDL equivalents’ on top of the proposed new Solicitors Qualifying Examination (SQE). The proposal is among several questions put to City firms in a toolkit created by the training committee at the City of London Law Society designed to help firms prepare for the proposed SQE.

Justice Week has taken place with the purpose: ‘Placing justice and the rule of law at the centre stage of public and political debate’. During the week, lawyers were urged to look at radical new approaches to ‘rebrand’ justice so as to build public and political understanding of its value. Justice Week is a new initiative of the Bar Council, CILEx and Law Society that aims to put justice and the rule of law “at the centre of public and political debate”. It has succeeded National Pro Bono Week.

In a landmark ruling, the High Court has ruled that the pressure of work or extreme working conditions “cannot either alone or in conjunction with stress or depression” justify not striking off dishonest solicitors. As a result, it struck off three solicitors whom the SDT found to be dishonest, but only gave suspended suspensions due to mental health issues at the relevant times. Some regulatory commentators argue that the ruling means the SRA should activate a dormant power in the Legal Services Act to introduce fitness to practise rules, which in effect would create a health jurisdiction akin to healthcare tribunals. Meanwhile, the Bar Council has teamed up with a leading workplace health provider to offer greater levels of wellbeing support to the entire self-employed bar, funded by BMIF.

Macfarlanes has become the second City law firm to publish gender pay gap data, joining a growing band of firms which have bowed to pressure to include partner earnings. In 2017/18 the mean pay gap including partners was 75% across the entire firm - and 54% among partners alone. Men were also paid more in bonuses overall. Allen & Overy was the first magic circle firm to publish full data, revealing a 39% pay gap across the workforce.

The Law Society is recommending that all law firms, including those with fewer than 250 employees, should publish their **gender pay gap statistics** in the current reporting period. In guidance the Society says all members should ‘where practical to do so’ undertake the reporting exercise and publish data on their website alongside a ‘narrative report’ and ‘action plan’. It adds that firms should consider gathering information on pay details for others within the workforce, including gaps related to disability, ethnicity and sexuality.

OPBAS, the anti-money laundering regulator, has said only one of the Law Society and SRA should offer solicitors helpline advice. OPBAS is concerned that the current situation risks providing solicitors with conflicting advice. OPBAS has been undertaking its first round of regulatory visits with the legal and accountancy supervisors they oversee. Separately it is consulting on the fees it will charge to recover its costs after revising downwards its annual budget from £2m to £1.4m. It has confirmed that all professional body supervisors must pay a minimum fee of £5,000 up to a threshold of 6,000 individuals, plus a variable rate per individual of £45.49 above this threshold.

A Court of Appeal judge has argued that **regulators should be required to be informed, and to publish, all the ownership, including ultimate ownership, of legal practices.** Lord Justice Irwin was concerned about a lack of transparency in the personal injury sector. Currently, the SRA publishes just the names of the heads of legal practice and of finance and administration, as well as any conditions on their licence or whether they are a subsidiary of a listed company.

Market developments

Gordon Dadds is set to become the largest listed law firm in the world by revenue after agreeing terms to acquire City practice Ince & Co for around £43m plus share options. The merged entity will be a top 40 UK law firm and will trade as Ince Gordon Dadds LLP. It will have revenues of over £110m, with 100 partners and offices in nine countries.

Four UK firms - Addleshaw Goddard, Ince & Co, CMS and Withers - have entered this year’s list of the 50 global firms with the biggest presence in Asia, as firms attempt to keep up with Chinese players’ breakneck growth. Chinese firms continue to dominate the Asian legal market, at least by number of lawyers. In 2017, 27 out of the 50 largest Asia-Pacific law firms by headcount came from China.

The number of UK lawyers working for ‘platform’ law firms has increased 29% to 1,035 in 2018, up from 803 in 2017. The growth of platform law firms is part of a growing trend for lawyers to work outside of the traditional law firm structure. Lawyers at these firms are self-employed, work remotely and use shared services provided by a central hub. Keystone Law became the first such firm to list on the London Stock Exchange in 2017.

Market intelligence and research

A report by Oxford Economics, the Law Society and Thomson Reuters, based on a survey of 250 legal professionals, suggests that the **legal services sector’s turnover could be 2.1 per cent smaller by 2025 if no agreement on Brexit is reached, the equivalent of £840 million in real terms.** It also suggests a 2.1% reduction in people employed, or 7,400 staff, and found the potential erosion of London’s position as an international financial centre was considered the most important Brexit-related threat by legal professionals surveyed.

Additional research by Thomson Reuters found that one-fifth of businesses surveyed had already changed international contracts, so that England and Wales will no longer be the choice for governing law and where disputes relating to these contracts would be heard.

IRN’s annual wills, probate and trusts market report suggests that **online will providers are 77% cheaper than solicitors on average.** It predicts that the value of wills and probate services is set to increase by £200m over the next five years to top £1.5bn by 2023. The report said a “clear trend in the last decade” had been a “steady increase” in the number of private individuals dealing with the grants of representation without legal assistance. This grew from just under 30% in 2007 to almost 38% by 2017. The report also predicted that new technology would make wills and probate services more profitable.

PwC’s annual law firms’ survey provides evidence of a thriving sector. Income from fees was up for almost 90% of the top 100 firms that responded, while 40% of them reported double-digit growth. However, the growth in revenue has not always translated into bigger profits — indeed, almost 30% of the top 100 saw profits fall over the year. Staff costs in particular were eroding profit margins, as firms compete with American law firms able to offer larger salaries. The report suggests part of UK firms’ success over the past year has been the better than expected performance of Britain’s economy since Brexit, while London remains an attractive place for their clients to carry out transactions as well as to pursue litigation. But PwC says firms have also made better use of technology, such as automated documentation, and new, more flexible and cheaper types of legal services.

A survey commissioned by the Law Society, Bar Council and CILEx to mark the launch of Justice Week found that **justice is as important to most people as health and education, but only 20% think there is sufficient funding in place for those who need legal advice.** The survey also revealed a widespread belief that justice favours the wealthy and that few people have confidence to defend themselves in a criminal case without a lawyer.

New research commissioned by the Financial Conduct Authority suggests that the **art of complaining is dying out.** 28% of respondents admitted they put up with situations because they lack of the confidence and know-how to speak out, with younger generations the least likely to be proactive about getting problems resolved.

Market intelligence and research
CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS

Indicator of success	Source	2012	2013	2014	2015	2016	2017	2018
<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	£3,470
LSB levy per authorised person	LSB	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83	£19.00
Public trust lawyers to tell the truth ^o	LSCP	43% ^A	42%	43%	47% ^A	42% ^A	45%	45%
Public confident consumer rights protected ^o	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 ^o	LSB	15%	14%	13%	14%			
Levels of shopping around: Individuals ^o	LSCP	22%	22%	24%	25%	25%	27% ^B	27%
Use of comparison/feedback sites: Individuals ^o	LSCP	1%	1%	1%	2%	2%	2% ^B	2%B
Ease of shopping around: Individuals ^o	LSCP	57%	55%	54%	57%	57%	47% ^B	58%A
Overall service satisfaction: Individuals ^o	LSCP	79%	80%	79%	78%	80%	80%	84% A,B
Providers publish prices on websites ^o	LSB					18%	18%	
Consumers who do nothing when dissatisfied ^o	LSCP	42%	44%	44%	42%	35%	49% ^A	35% A,B
Public confidence in complaining about lawyers ^o	LSCP	49%	44% ^A	45%	48%	43% ^A	44%	45% B
No action when have legal issue: SMEs ^o	LSB		8%		9%		10% ^B	
Levels of shopping around: SMEs ^o	LSB						22%	
Ease of finding provider: SMEs ^o	LSB				25%		50%	
Lawyers perceived as cost-effective: SMEs ^o	LSB		12%		14%		11% ^A	
<i>Increasing innovation, growth and the diversity of services and providers</i>								
UK wide legal services turnover (uninflated)	ONS	£27.2bn	£29.3bn	£30.5bn	£32.3bn	£31.8bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	
Level of service innovation (over 3yrs) ^o	LSB				28%			26%
Regulation seen as barrier to service innovation ^o	LSB				50%			40% A,B
Firms state reduced prices in last 12 months ^o	LSB					4%	4%	
Net exports of UK legal services	ONS	£3.1bn	£3.4bn	£3.8bn	£4.4bn	£4.0bn		
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%

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