

Annex C - Horizon scanning report

(Covers the period 12 May to 4 July 2018)

The top five

A string of big city law firms have been criticised by separate parliamentary select committees. A joint report by the Work and Pensions and Business, Energy and Industrial Strategy select committees criticised the almost £4m paid to City law firms shortly before the collapse of Carillion. The foreign affairs select committee report on Russia's stake in the UK and the associated risk to national security criticised Linklaters for its refusal to cooperate with its enquiries. The Business, Energy and Industrial Strategy select committee criticised Slaughter and May for not including partners in its statutory pay gap report. Echoing this the Treasury Select Committee called for more pressure to be placed on law firms to include partners in the reporting of their gender pay gaps.

The criminal Bar voted by a narrow margin (52:48%) to accept the government's offer of £15m additional funding for the advocates' graduated fee scheme (AGFS), a result it described as "neither a defeat nor a victory". Around 100 chambers had been refusing to take on new legal aid work since 1 April in protest against changes to the AGFS which determines how criminal advocates are remunerated in legal aid cases. The Lord Chancellor had called the impact of disruption to the courts due to the action as 'unacceptable'. The Law Society has said it hopes a similar deal can be reached in relation to the litigators' graduated fee scheme (LGFS) ahead of a High Court judicial review hearing this summer.

The outgoing Director of Public Prosecutions gave evidence to the Justice Select Committee following the collapse of high profile rape and sexual assault trials due to the withholding of vital evidence by prosecutors and police. An internal review by the CPS of over 3,600 such cases yet to go to trial has found that evidence had been withheld from defence lawyers in 47 cases. However, the review only covers a tiny fraction of the total number of cases prosecuted by the CPS each year and lawyers in the criminal justice system have claimed for years that disclosure failures are systemic and not specific to rape.

Regulators have announced decisions on consultations to improve transparency for consumers following the CMA market study. The SRA has decided that law firms will have to publish their prices for a range of consumer and business services, but they will not have to put their complaints records in the public domain. The CLC has decided to mandate publication of service standards and prices by the firms it regulates having previously indicated it planned to rely on existing rules and voluntary guidance. CILEx Regulation has issued a fresh consultation on information it will require its regulated firms to publish online and provide to consumers, initially targeted at residential conveyancing and probate work.

Deloitte has been awarded its ABS licence, the last of the Big Four accountancy firms to obtain one. The ABS has have two new offerings: managed services, such as automated document review and contract management, and consulting services. Deloitte also plans to extend its existing legal services in employment law, tax litigation and immigration. The company has also formed an alliance with US law firm Berry Appleman & Leiden (BAL) to create what it claims is "the first global immigration service delivery model".

Political developments affecting the justice sector

In a written statement to Parliament, justice minister Lucy Frazer QC admitted the government had overcharged on a range of different court fees. She confirmed legislation reducing court fees for certain proceedings will be laid in parliament, as well as a refund scheme established for those overcharged. The lost income from reducing the fees is set to cost around £9m a year.

The publication of a UK government presentation to the EU - on the Framework for the UK-EU Economic Partnership - references civil judicial co-operation, intellectual property and mutual recognition of professional qualifications. The Law Society has given a cautious welcome to the document, which sets out the UK's ambitions for a future economic partnership with the EU and will form the basis of the UK's negotiating position.

The Professional and Business Services Council has handed the prime minister a list of requirements they say are crucial to preserving the £188bn sector in any Brexit deal. The 42 signatories to the letter to Theresa May, drawn from a range of consultancy, law, architecture, engineering and advertising firms, say any deal with Brussels must ensure the mutual recognition of regulations and regulatory bodies, court judgments, professional qualifications and operating licences between Britain and the EU27. They also want continued co-operation in areas that facilitate trade, such as data sharing, and the ability for UK-based accountants, lawyers and others to recruit freely from overseas.

The Lord Chancellor has unveiled plans for a panel of industry professionals to support and accelerate the development and adoption of innovative new legal technologies. Christina Blacklaws will chair a panel consisting of a mixture of academics, representative bodies, technologists and members of the judiciary, with working groups established on specific issues. The panel is envisaged to act as an innovation catalyst which will ultimately support the growth of a thriving LawTech sector and the use of new legal technologies ensuring the UK becomes a world-leading hub for legal technologies and LawTech companies, and remains a premier centre for legal services.

Speaking in a Commons debate on public legal education, **Maria Miller, chair of the women and equalities select committee, called on the SRA to do more to combat a lack of public understanding of equality laws.** Ms Miller said the #MeToo campaign had highlighted how people's "absolute ignorance of the law" led them to being coerced into signing severance agreements that included non-disclosure agreements.

In an update paper, **HMCTS said it is still considering views on introducing flexible operating hours as part of court modernisation** – a proposal which provoked an angry reaction from the profession last year.

Latest government figures on legal aid show the number of legal aid firms and not-for-profit agencies offering social welfare law advice has fallen by a third in the five years since LASPO. However, applications to the exceptional case funding scheme were at a record high, which was attributed to an increase in immigration applications. The ECF scheme has been widely criticised in the past due to the tiny number of applications. Mediation numbers dropped to under half pre-LASPO levels.

A row has broken out about parents falsely claiming domestic abuse in order to access legal aid. Families Need Fathers says parents are being encouraged by some solicitors to file for non-molestation orders - injunctions used in urgent abuse cases. New figures show a 30% rise in orders made after legal aid was axed in everything but abuse cases in family courts in 2012. Both the outgoing and incoming presidents of the High Court

family division have suggested there is an issue to address. However, the Ministry of Justice said there may be various reasons behind the increase in orders and Women's Aid pointed to record numbers of domestic abuse related incidents.

Regulatory and wider policy developments

The Law Society has appointed Paul Tennant, interim chief executive since last year, as its permanent CEO with immediate effect.

The Lord Chancellor has appointed Mr Justice Green as the new Chair of the Law Commission of England and Wales for a three-year term.

Christina Blacklaws was sworn in as president of the Law Society on 5 July. She said her priorities would include gender equality and furthering women's representation in leadership roles in the profession, promoting the use of emerging technology and continuing the Law Society's campaign for proper funding of the justice system.

An independent review into the regulatory framework for legal services in the UK is to be led by Professor Stephen Mayson. Professor Mayson will be working with colleagues at UCL and supported by an advisory panel of experts with a range of expertise across law, regulation and governance, ethics, business, economics and consumer matters. It aims to report by the end of 2019 and will present recommendations to the Ministry of Justice.

The Law Society is proposing to freeze the practising certificate fee, but contributions to the compensation fund are to more than double ahead of an expected rise in claims arising from solicitors' involvement in fraudulent investment schemes. The proposal would see the Society receive £30.6m under the permitted purposes provisions of the Act.

The SRA has unveiled the final wave of changes to its Handbook. It has tempered its proposal to allow solicitors to set up their own law firms as soon as they qualify. Any firm it regulates will be required to have at least one manager or employee with three years' experience. The SRA hopes that the new regime will come into force in April 2019.

The LSCP has said the SRA's proposed insurance reforms would pile too much risk on consumers without commensurate benefit. The Panel's consultation response also questioned whether law firms would buy top-up insurance. Should the reforms go ahead, it wants the SRA to impose an information requirement on lawyers to make clear when cover was not high enough to cover the consumer's assets. The City of London Law Society has also criticised the proposals arguing the claimed benefits for small firms are illusory. The Association of British Insurers warned the SRA was wrong to assume that premiums will fall as a result of its reforms and said the trade-off of possible savings with damage to the profession's reputation was not worth taking the risk.

The Law Society criticised the SRA for 'jumping the gun' by providing waivers allowing unauthorised firms to hire solicitors. Allowing unregulated businesses to offer legal advice through regulated solicitors has been a controversial issue in the SRA's consultation on proposed reforms to its Handbook. The Law Society argued that a policy change of this magnitude should be approved by the LSB before being permitted.

The SRA has decided not to take action against Clifford Chance following allegations that it overlooked fraud during its investigation into the Royal Bank of Scotland's treatment of small companies in 2014.

In the final policy statement to come out of its **Future Bar Training project**, the BSB has decided that the 12-month period for work-based learning – pupillages and other formats that may develop – should remain but made changes to the way vocational and on-the-job training is delivered. It will also peg the minimum pupillage award – currently £12,000 – to the national living wage. The Bar Council gave a mixed response to the proposals, including concerns about opening up advocacy training to providers outside the Inns of Court.

The Bar Council has called on the BSB not to move to an “entirely different system” for dealing with barristers accused of misconduct. In particular, it said the professional conduct committee PCC was “working well” and should not be “disbanded” in favour of an independent decision-making body. The Bar Council said it was also concerned that the draft enforcement decision regulations allowed, in principle, all decisions to be made by staff.

The Notaries Society has called on the Faculty Office to abandon its oversight of probate and conveyancing activities. Its ruling council decided with “a degree of reluctance” to call for the pull-out. “Purely on the basis of risk to the general public, and the lack of manpower of our regulator the Faculty Office, those notaries who wish to carry out the reserved activities generally referred to as ‘conveyancing and probate’ should no longer be regulated by the Faculty Office in respect of those particular activities.” The move was prompted partly by the conviction of a notary and solicitor who was jailed last year for stealing over £4m from clients and struck off by the SDT.

The SRA impact survey on the abolition of the minimum salary in August 2014 found it has led to an average drop in wages, with trainees at the lowest-paying 2% of firms worst affected. Trainee solicitors at the top-paying firms receive more than three times those at the bottom, while the gap in earnings between female trainees and their male counterparts has widened since the minimum salary was scrapped. Trainees from BAME backgrounds were more likely to be at these firms, at which salaries were now “up to” £13,104 a year. Before the abolition, the minimum salary was £17,268.

Women have overtaken men as a majority of practising solicitors, however men are still twice as likely to be partners. There were 139,624 solicitors with practising certificates in 2017, a 2.5% increase on the previous year and broadly in line with annual growth over the past 10 years. That is a rise of 29% in the last decade alone, highlighting just how well the profession rode out the financial crisis. Nearly 17% of PC holders with known ethnicity are from BAME groups. The figures also revealed the decreasing popularity of the partnership structure, which now makes up 45% of firms, compared to 60% five years ago.

Only 23% of black and ethnic minority Bar school graduates from the UK and EU got a pupillage last year, according to figures released by the BSB. That figure was up by 2.5% on the previous year, but showed a marked disparity with their white counterparts who were more than twice as likely to get a pupillage, with almost 50% successful. Among the UK/EU-domiciled BPTC graduates, 50% of pupillages were awarded to women, up from 48% last year. The overall chance of getting a pupillage is slim, with less than 43% of those who enrolled on the course from 2012/13-2015/16 having started one.

The Lord Chief Justice has expressed concern about a shortage of High Court judges. For the fourth year in a row the Judicial Appointments Commission has been unable to recommend for appointment the number of judges needed to maintain the statutory complement of 108 High Court judges (the current number is 93). Lord Burnett of Maldon said there is an urgent need to act now to avoid serious and lasting damage to the High Court and to the international position of the jurisdiction. He suggested the government’s response to the Senior Salaries Review Body report will be vital in addressing the issue.

The Lord Chief Justice has called the ability of computers to use big data to predict outcomes “one of the most exciting developments of the age” and forecast the technology would be used to prevent litigation and promote settlements. In the long run, while he doubted judges would be replaced by robots, he anticipated artificial intelligence would reduce the number of disputes reaching trial. He said that a small group, including “far-sighted judges” had been convened under the chairmanship of Professor Richard Susskind “to think about the future beyond the current digital court modernisation reforms.

HMCTS has set out how it will develop its new online divorce facility, starting with enabling lawyers to submit petitions on behalf of clients. Earlier this year it started enabling people to issue divorce petitions online, reducing to nearly zero the number errors that previously plagued paper versions. It will now make the rest of the process digital – including the response from the other spouse to the application and the final certificate of divorce. However, the pronouncement of the decree nisi by a judge will continue to happen in a courtroom. HMCTS intend to extend the approach to other areas of family law.

The Law Society has launched a public policy commission on the impact of new technology on the justice system. Ethical, moral and legal risks from the growing use of algorithms are under the spotlight. The Law Society commissioners will take oral and written evidence from tech, government, academics, commercial actors and legal and human rights experts to explore an overarching question: what framework for the use of big data and algorithms could protect human rights and trust in the justice system?

A study by Dr Catrina Denvir and UCL commissioned by the Civil Justice Council on assisted digital services has concluded that **the Ministry of Justice is at risk of freezing out a large number of vulnerable people from accessing the online court if it does not reshape its strategy for assisting the ‘digitally excluded’**. Meanwhile, addressing the same issue, a separate report for legal campaign group JUSTICE called for further research targeted at hard-to-reach groups, such as the homeless and detainees. HMCTS pledged to the Justice Select Committee that non-digital systems would remain alongside digital ones so vulnerable groups would not be left behind.

The University of Manchester has introduced a lawtech module into its undergraduate curriculum in a move that signals artificial intelligence’s (AI) arrival in the legal education mainstream. Final year students will be able to take a new optional module called ‘Legal Tech and Access to Justice’ that is being delivered in partnership with AI company Neota Logic and magic circle law firm Freshfields Bruckhaus Deringer. The course will use Neota’s software to teach students to build applications that improve access to justice.

The Advertising Standards Authority has ordered a legal services provider to make clear it does not offer the same protections as a regulated law firm. It ruled that the website for Scottish business Law at Work Ltd breached two of its rules on misleading advertising and that clients would not be fully aware of their lack of access to redress. The business is owned by qualified solicitors but is not regulated by the Law Society of Scotland.

The FCA is consulting on how it will regulate claims management companies (CMCs) when it takes over their regulation on 1 April 2019. The FCA’s proposals will require CMCs, before any contract is agreed, to provide a potential customer with a short summary document containing important information such as an illustration of fees charged and an overview of the services the CMC will provide. CMCs will also need to highlight any free alternatives to using the CMC, such as ombudsmen schemes, in marketing material and pre-contract disclosures. CMCs will need to provide customers with regular updates about the status of their claims and estimates of any potential fees once claims values are known.

Other requirements include a requirement for firms to hold capital linked to the type of business they undertake and protecting any money firms hold on behalf of clients.

The Claims Management Regulator's annual report shows that CMCs are moving into property related complaints, in particular housing disrepair claims. The report shows the surge in holiday sickness claims has abated, which it says is due to a successful collaborative effort with the SRA, Ministry of Justice and ABTA. Overall the turnover of CMCs increased by 5% to £763m – an increase entirely due to financial services CMCs whereas turnover among personal injury CMCs fell by 14%. The total number of CMCs is now 1,238 down from a peak of 3,213 in 2011.

Law reform group JUSTICE has called on regulators to tighten their rules on training and supervision of unqualified immigration advisers. The Immigration Act 1999 allows immigration advice to be provided by unqualified advisers acting on behalf of and supervised by qualified staff. The SRA and OISC argue that the current arrangements enable trainees to gain experience, but JUSTICE wants the requirements to be tightened in order to 'improve fairness, efficiency and quality of advice'.

Aspiring lawyers wishing to practise in America can now study for the New York or California state bar exam at Durham University, thanks to a first-of-its-kind partnership between the university and international legal education provider BARBRI International.

Conveyancers are facing higher PII costs due to a Court of Appeal ruling in Dreamvar, experts have predicted. The case, which involved identity fraud on the part of the purported seller, saw both his solicitors and the buyer's solicitors held liable to the buyer for breach of trust. It is possible that the case will be appealed to the Supreme Court.

Market developments

A major city law firm has launched automated "lawyer-free" digital contracts, starting with non-disclosure agreements. Swiftagree is a platform launched by newly-merged international firm Bryan Cave Leighton Paisner (BCLP) – formerly City firm Berwin Leighton Paisner and US practice Bryan Cave. The cost per NDA is £5 including VAT. The firm said it is considering various agreement types across the financial services, real estate and general commercial sectors.

LOD – the flexible lawyers business previously known as Lawyers On Demand – has taken private equity after Bowmark Capital, which specialises in investing in growth companies, became its principal shareholder. A decade ago, LOD was the first provider of freelance lawyers to companies and law firms, a model that has since been widely copied.

Pioneering ABS Knights is the latest law firm to announce its intention to float on AIM, pledging to make three acquisitions in the next two years as part of its continuing growth strategy. Once it begins trading in late June, it will become the fifth law firm to list. Separately, the Anexo Group, which brings together a credit hire business and Liverpool based personal injury law firm Bond Turner, has listed on the stock exchange.

A payment processor has taken the place of conveyancers in handling the finances on completion day in what has been claimed to be **the UK's first fully digital mortgage settlement.** Shieldpay worked with Barclays on a pilot transaction with conveyancing firm Premier Property Lawyers and its regulator, the CLC. Shieldpay provided a digital escrow

facility to take charge of the purchase money, pay the seller, and pay both the stamp duty and Land Registry fees for the property.

Two former partners of leading City law firms have launched an online legal directory, top3legal.com, which they hope will replace the traditional directories. The service enables client recommendations to be linked to an existing database of 156,000 lawyers, assembled from publicly available information.

Market intelligence and research

Research commissioned by the SRA and BSB has found that judges' perceive criminal advocates to be generally competent but some standards are slipping. Areas for improvement included core courtroom skills such as case preparation and dealing with witnesses, but advocates' skills in dealing with young and vulnerable witnesses were thought to be generally improving. The report also notes that solicitor-advocates and in-house barristers were 'less well reviewed' by judges than members of the independent bar. The judges explained this apparent disparity by referring to differences in the training of barristers and solicitor-advocates and the narrower professional experience of in-house advocates. Judges also said they perceived standards to be poorer than when they had practised.

The Bar Council's latest annual working lives survey found that 18% of criminal barristers reported personal experience of bullying and 26% reported observations of harassment. Overall reports of bullying and harassment have increased, although it is unclear whether this is due to greater consciousness of the issue or changes in behaviour.

The Bar Council's new report on barristers' attitudes towards their working lives, reveals that barristers across England and Wales are struggling with a number of factors affecting their overall working lives, such as workload, stress, and work-life balance. The survey also showed that barristers are routinely working the equivalent of at least one or two days of work per week unpaid. Barristers are also working more hours and suffering from greater levels of stress than in 2013. Funding cuts, lack of work-life balance and stress were listed as the major factors for those thinking of changing career.

The first **social mobility** statistics released by the Judicial Appointments Commission show that almost two-thirds of lawyers recommended to become judges in the past year attended state schools. 44% had one or more parent who attended university and 56% were the first in their family to attend university. BAME candidates constituted 19% of candidates but only 13% of those were recommended for appointment. Solicitors represented 36% of applicants and 21% of recommendations across all competitions, but no solicitors were recommended to become a High Court judge despite representing 10% of applicants for posts at this level.

Research by Economic Insight for the SRA and Legal Ombudsman found there was not a strong case for publishing first-tier complaints data at this stage. It noted that similar sectors did not do so, instead such data tends to be published in sectors where outcomes are more easily categorised as 'good' or 'bad', as for example in utilities and financial services. The research also found that most consumers were prepared to pay more for regulated legal services which offer them greater protection, but identified low levels of awareness of consumer protections among those who had used a regulated law firm.

In his latest annual review for the Legal Education Foundation, Professor Roger Smith concludes that **technology has great potential or is delivering exciting commercial applications, but is 'spluttering' at present in the field of access to justice.** However,

he said that the direction of travel was positive with resistance to change dissipating and more entities in both the for profit and not for profit spheres exploring the possibilities.

Based on its annual benchmarking survey of over 100 law firms, MHA – a UK-wide association of accountancy and advisory firms – has said that **small and mid-sized law firms need to accept that lower levels of profitability are becoming the “new normal”**. While law firms in the past aimed to achieve net profits of 33%, the survey found the “new normal” was closer to 25%. The authors linked the drops in income and profitability to changes in the personal injury and conveyancing sectors, while arguing smaller practices have seen even more competition from online sources.

The annual bellwether report by LexisNexis found almost three-quarters of lawyers in small firms reporting a clash between a client-driven market and the traditional role of a lawyer. Lawyers ranked the continuing demands of compliance regulations, attracting new business and keeping up-to-date with industry changes as the top three challenges facing their business. The report also claimed that online search and price comparison is now the norm and client empowerment is at an all-time high as a result.

Analysis by the Portland Group has found **London’s commercial courts were busier than ever last year**, with a 22% rise in the number of litigants and 7% increase in the number of cases heard. Kazakhstan, Russia and the USA were the top three source of litigants outside the UK. However, Portland identified challenges to London’s position as “destination of choice” for commercial litigants as competition from Singapore and a potential hard Brexit where rulings in London might no longer enforceable in the EU.

The latest market tracker by search company Search Acumen, which analyses Land Registry data, shows conveyancers workload has been busy at the start of the year. There were 271,546 transactions between January and March - the highest recorded since 2016. Business has declined 10% since 2014 for firms that handle between five and 10 cases a month. However, firms handling between 200 and 500 cases a month have seen business increase by 50% over the last four years. The top 1,000 firms covered three-quarters of the market; the top five handled 6%.

A survey commissioned by HMCTS has found the majority of people using the courts service in England and Wales are content with their experience. 54% of respondents rated their encounter as ‘very good’ or ‘fairly good’ while 38% rated it as fairly poor or very poor. In relation to delays, half of users thought the time taken for their case was satisfactory, versus 43% who said the process was too slow.

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%	
Public confident consumer rights protected ^o	LSCP	49%	46%	46%	50% ^A	46% ^A	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 ^o	LSB	15%	14%	13%	14%			
Levels of shopping around: Individuals ^o	LSCP	22%	22%	24%	25%	25%	27% ^B	
Use of comparison/feedback sites: Individuals ^o	LSCP	1%	1%	1%	2%	2%	2% ^B	
Ease of shopping around: Individuals ^o	LSCP	57%	55%	54%	57%	57%	47% ^B	
Overall service satisfaction: Individuals ^o	LSCP	79%	80%	79%	78%	80%	80%	
Providers publish prices on websites ^o	LSB					18%	18%	
Consumers who do nothing when dissatisfied ^o	LSCP	42%	44%	44%	42%	35%	49% ^A	
Public confidence in complaining about lawyers ^o	LSCP	49%	44% ^A	45%	48%	43% ^A	44%	
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	£26.4bn	£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%			
Regulation seen as barrier to innovation ^o	LSB				24%			
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