

Horizon scanning report

(Covers the period 23 May to 2 July 2019)

The top five

The SRA has published the results of a web sweep to check compliance with its new market transparency requirements. Of the 447 websites checked, 17% were not compliant at all and 58% were only partially compliant. The most widespread failing was not displaying information on how to complain. Other areas included not specifying the amount of VAT applied to costs and not displaying information on key stages or likely timescales. Immigration and residential conveyancing were among the worst areas of law. The SRA will follow up with non-compliant firms and plans to carry out two web sweeps a year.

The Women and Equalities Select Committee published its report on the use of NDAs in discrimination cases. It recognised some improvement in how lawyers approach the use of NDAs but called for regulators to take 'rigorous enforcement action' over poor conduct. It also called on the Law Society to revisit its guidance following recent criticism. The committee made a number of recommendations to government to strengthen legal protections for employees. It also expressed concern about the lack of affordable legal advice for employment discrimination cases and called for stronger remedies to be available to employment tribunals, including the possibility of awarding punitive damages.

Criminal barristers voted overwhelmingly in favour of a one-day walkout over legal aid and prosecution fees but then called it off after striking a deal with the Government.

On prosecution fees, the CPS has agreed that all fixed fees will be increased to the level of the Advocates' Graduated Fees Scheme from September. On defence fees, the Ministry of Justice has announced that the issues of unused material, fees paid for cracked trials, and uplifts in paper-heavy cases will be considered more quickly than planned. Proposals for change will be provided by the end of November 2019. A fundamental review of the criminal legal aid system, including all the defence fee schemes, will report in summer 2020.

The Government has published a white paper on regulation for the fourth industrial revolution. Measures announced include: a new Regulatory Horizons Council to advise government on rules and regulations that may need to evolve and adapt to keep pace with technology; a Regulation Navigator – a new digital interface to help businesses ease their way through the regulatory landscape and bring their ideas to market quickly; a partnership with the World Economic Forum to share best practice on getting innovative products and services to market; and a review of the Regulators' Pioneer Fund.

The CMA announced research into certain aspects of the Scottish legal services market to support the Scottish Government's response to the Robertson Review. The work will examine whether there is evidence of a lack of competition among providers, the benefits of independent regulation and the impact of the current regulatory framework on competition. The CMA intends to publish its findings in early 2020.

Political developments affecting the justice sector

The Lord Chancellor agreed to make Orders to designate the ICAEW as an approved regulator and licensing authority for the administration of oaths. The decision follows the outcome of ICAEW's judicial review when the court quashed the Lord Chancellor's original decision on this aspect of the application only.

The Divorce, Dissolution and Separation Bill has started its parliamentary passage. The legislation would introduce no-fault divorce laws and looks set to pass with cross-party support since the proposals have been widely supported by stakeholders.

The Courts and Tribunals (Online Procedure) Bill, which will give a legal basis for **online procedures in civil and family courts** – has been through committee stage in the Lords. Lord Keen gave assurances the government has no intention of making court processes exclusively online and indicated the Government might give the Lord Chief Justice a veto over what areas of law are moved online.

The Lord Chancellor has pledged just over £2m extra funding for lawtech. There are no details on how it will be spent, but Christina Blacklaws has indicated that it will support the work of the LawTech Delivery Panel which she chairs. In a speech that was positive overall about AI, Mr Gauke also acknowledged the challenges that needed to be overcome, ensuring that new technologies are properly regulated are held to "appropriate ethical standards". He also called for debate on the extent to which AI can, and should, be deployed in judicial decision making and in the administration of justice.

The Justice Select Committee has renewed its call for the government to develop a national strategy for magistrates. Its chair, Bob Neill, suggested that magistrates have been badly let down by the failure of the government to take action and provide appropriate funding to tackle the issues identified by the committee in a report three years ago.

The government has confirmed it will consult on giving the CMA new powers to decide itself whether consumer law has been broken and issue a direct fine, without having to go to court. The announcement formed part of its response to the CMA's report on Citizens Advice's super-complaint on the loyalty penalty and will be taken forward as part of the forthcoming consumer white paper. The Government also announced plans to issue a cross-sectoral statement of strategic priorities for the regulated sectors.

The government is to consult on strengthening the powers of the Small Business Commissioner in relation to late payments. New powers could include compelling information and disclosure of payment terms and practices, imposing financial penalties or binding payment plans on large businesses found to have unfair payment practices. Responsibility of the existing voluntary code of best practice – the Prompt Payment Code – will be moved to the Small Business Commissioner.

Government is consulting on creating a New Homes Ombudsman. The consultation favours a single scheme underpinned by statute covering all developers, but is undecided whether this should be delivered by a public sector body or private sector scheme. It has ruled out the scheme covering disputes that involve other actors in the sector, e.g. solicitors.

Regulatory and wider policy developments

Vanessa Davies has announced her retirement as director general of the BSB at the end of the year.

Helen Whiteman is leaving CILEx Regulation to head the Chartered Institute of Taxation.

Rebecca Lawrence has been appointed chief executive of the Crown Prosecution Service. She currently leads the London Mayor's Office for Policing and Crime.

Nick Goodwin has been appointed CEO of the Office of the Public Guardian. He was formerly the director for access to justice policy at the Ministry of Justice.

Baroness Zahida Manzoor has been appointed Chair of the Financial Ombudsman Service. Prior to the Legal Services Act she was the Legal Services Complaints Commissioner – an oversight body for the predecessor schemes to the Legal Ombudsman.

A statutory EHRC inquiry has found that victims of discrimination are being denied their fundamental right to justice and perpetrators are going unchallenged because of the current legal aid system. The EHRC's recommendations to government include: ensuring face-to-face advice is available for anyone who wants it; ensuring the telephone gateway service makes reasonable adjustments for disabled people; addressing disparities in positive outcomes between white and ethnic minority service users; amending guidance on civil legal aid relating to representation in court; increasing transparency on discrimination cases that reach court; amending the guidance on exceptional case funding; reviewing financial eligibility requirements; and increasing public awareness of legal aid.

The Law Commission has found that businesses are sending thousands of low quality suspicious activity reports (SARs) on money laundering activity. A record 470,000 SARs were sent in 2018-19. Its report makes a series of recommendations to the Home Office, including the creation of an advisory board, a standardised form for SAR submissions and statutory guidance issued by the secretary of state.

The SRA has outlined how it plans to improve corporate transparency. This includes the publication of an engagement charter, more information on how decisions are made and a bigger social media profile. However, it does not propose to hold board meetings in public.

The BSB has issued a call for evidence to help it scope a planned review of its Handbook - the document includes the Code of Conduct for barristers and the rules with which they must comply. It will decide on the scope of the review in early 2020.

The Law Society has published a damning report on what it calls a crumbling criminal justice system. Its central contention is that many years of underinvestment mean things are going wrong at every level. The report makes 11 recommendations including: uprating the legal aid means test in line with inflation; abolishing 'warned', 'block' and 'floating' lists and increasing criminal legal aid fees. It has also called for a criminal legal aid task force to be established to bring together the entire sector.

The Law Society's policy commission on algorithms in the criminal justice system has reported after a year-long investigation. It concluded that algorithm-based machine-learning has the potential to improve the criminal justice system - but warns of 'a worrying lack of oversight' over current experiments. The commission also recommends measures to improve transparency and accountability – and for the operators of the new technology to comply with the public sector equality duty. The report raises the issue of AI reinforcing

rather than eliminating human prejudices, but overall it is more positive than other recent studies about the potential role of the technology in the criminal justice system.

The LSCP has said regulators need to monitor the development of legal technology and issue guidance to help maximise the opportunities it presents while delivering the necessary protection for consumers. It also suggested that regulators explore “incentivising providers to use lawtech, to widen access to legal services”. However, it comes against a background of research being published soon by the Panel showing that 47% of consumers lack trust in AI technology used to deliver legal services.

The SRA’s annual report shows the number of firms it has closed down fell to a ten-year low (33), but payouts from the compensation fund increased. In 2017/18 the SRA paid out on 1,553 claims worth a total of £18.1m – with the main pay outs being to replace people’s inheritance and property deposits. There are now nearly 200,000 solicitors on the roll, up 3.7% since last year, although the number of firms has stayed largely static.

An analysis of SRA enforcement activity by law firm Hickman & Rose has shown **40% more prosecutions of solicitor misconduct before the SDT over the past five years**, rising from 97 in 2013-14 to 134 in 2017-18. The SRA has also secured more serious punishments over the same period: the number of solicitors struck off has gone up from 56 to 78. Iain Miller, partner at Kingsley Napley, suggested that the SRA was moving into territory that it would not have looked at in the past, particularly at allegations relating to sexual misconduct and social media activity. However, he said that there were other areas that the SRA had become less vigorous in pursuing, such as historical client balances.

The Junior Division of the Law Society (JLD) has written an open letter to the Justice Select Committee asking it to hold an evidence session or short inquiry to review the LSB’s decision on the SRA’s **SQE proposals**. While supportive of a centralised assessment, the JLD is against proposals that would remove the requirement to study academic law substantively, multiple choice examinations, training only requiring the opportunity to develop necessary competencies and sign-off being possible by a newly qualified solicitor.

The Law Society has issued a global call to arms on gender equality. In a report that followed roundtables across five continents, it made recommendations centring on encouraging men to be champions of change, a zero tolerance for sexual harassment, women supporting other women, targets and quotas, leadership, and recruitment processes. At a two-day summit a Women in Law pledge was also unveiled, encouraging firms to hold themselves accountable for driving gender equality in their workforce. The pledge, devised by the Law Society, Bar Council and CILEx, has been backed by the Lord Chancellor.

The CLC’s latest diversity return shows that men are twice as likely as women to be in managerial roles in the firms it regulates. 14% individuals were from BAME backgrounds but were more likely to be in administrative roles. 56% of practitioners reported their parents had no formal qualifications or qualifications below degree level – a better picture on social mobility than the legal sector as a whole. The CLC’s Council will consider in June what steps it can take to improve diversity, including possible changes to its equality code.

Judicial Appointments Commission figures show that **solicitors applying to be judges are half as likely to succeed as barristers.** The overall recommendation rate for applicants was 13% for solicitors and 27% for barristers. In the last twelve month period, 2,503 current and former solicitors applied to be judges, but only 351 were recommended for appointment.

Market developments

Knights, one of the UK's first listed law firms, is forecasting that profits will more than double during its first year as a public company. The firm reported that adjusted profit before tax is expected to be £9.7m for the year to 30 April, a 102% annual increase, which it attributed to acquisitions and organic growth.

Eversheds Sutherland is to hive off three of its legal services teams into an ABS, from which it will seek external investment to help the new venture more than double revenues to £100m by 2024. The venture is intended to be a global alternative legal service and compliance provider and is due to launch in the US by the end of this year. Key to its offering will be technology, including cutting edge robotics and artificial intelligence.

Market intelligence and research

A poll commissioned by the SRA and Nesta to launch their Legal Access Challenge has found the **majority of people in England and Wales think the legal system is not set up for ordinary people, with only half seeking advice from a lawyer.** When asked about barriers to accessing legal advice, high cost was cited by 68% of people, followed by the uncertainty of the cost (56%). Knowing who to trust, whether they were receiving good advice and where to start in the first place were also significant impediments.

New figures show that 65% of senior judges were educated at an independent school. This was the highest of all the professions examined, although the proportion who went to a comprehensive school has trebled since 2014. The study was carried out by the Social Mobility Commission and the Sutton Trust.

Search Acumen's latest tracker based on Land Registry data has found **the number of firms involved in conveyancing has dropped below 4,000 for the first time on record.** Also for the first time, the top 1,000 conveyancers control more than three quarters of the market, with the top 200 firms taking 39% of the market. However, the share of the market taken by the top five conveyancing firms has shrunk in the past five years.

Analysis of SRA data by Hazlewoods Chartered Accountants suggests that **523 new law firms are planning to open in the next year** - up from 514 last year. This would mean new entrants represent around 5% of the market. Hazelwoods suggest the trend reflects the strength of the market and pinpoint lawyers leaving larger firms to set up their own practices.

Bail for Immigration Detainees (BID), a charity that challenges detention in removal centres and prisons, has argued that **legal representation for immigration detainees is very poor.** Based on a survey of 77 clients, it said interviewees "painted a damning picture of the quality of the legal advice surgeries" under the Legal Aid Agency's detention duty advice scheme. Nearly half those who had an appointment with a solicitor did not have their cases taken on, mostly because they either could not afford one or were ineligible for legal aid.

Market intelligence and research

CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS

Indicator of success	Source	2012	2013	2014	2015	2016	2017	2018	2019
<i>Promoting the public interest through ensuring independent, effective and proportionate regulation</i>									
LSB expenditure	LSB	£4,578k	£4,264k	£4,266k	£3,921k	£3,587k	£3,525k	£3,470k	£3,725k
LSB levy per authorised person	LSB	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83	£19.00	£20.01
Public trust lawyers to tell the truth [○]	LSCP	43% ^A	42%	43%	47% ^A	42% ^A	45%	45%	
Public confident consumer rights protected [○]	LSCP	49%	46%	46%	50% ^A	46% ^A	48%	49%	
<i>Making it easier for all consumers to access the services they need and get redress</i>									
No action when have legal issue: Individuals [○]	LSB	15%	14%	13%	14%				
Levels of shopping around: Individuals [○]	LSCP	22%	22%	24%	25%	25%	27% ^B	27%	
Use of comparison/feedback sites: Individuals [○]	LSCP	1%	1%	1%	2%	2%	2% ^B	2%B	
Ease of shopping around: Individuals [○]	LSCP	57%	55%	54%	57%	57%	47% ^B	58%A	
Overall service satisfaction: Individuals [○]	LSCP	79%	80%	79%	78%	80%	80%	84% A,B	
Providers publish prices on websites [○]	LSB					18%	18%		
Consumers who do nothing when dissatisfied [○]	LSCP	42%	44%	44%	42%	35%	49% ^A	35% A,B	
Public confidence in complaining about lawyers [○]	LSCP	49%	44% ^A	45%	48%	43% ^A	44%	45% B	
No action when have legal issue: SMEs [○]	LSB		8%		9%		10% ^B		
Levels of shopping around: SMEs [○]	LSB						22%		
Ease of finding provider: SMEs [○]	LSB				25%		50%		
Lawyers perceived as cost-effective: SMEs [○]	LSB		12%		14%		11% ^A		
<i>Increasing innovation, growth and the diversity of services and providers</i>									
UK wide legal services turnover (uninflated)	ONS	£27.9bn	£30.4bn	£30.8bn	£31.6bn	£32.4bn	£33.3bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	1,244	1,306
Level of service innovation (over 3yrs) [○]	LSB				28%			26%	
Regulation seen as barrier to service innovation [○]	LSB				50%			40% A,B	
Firms state reduced prices in last 12 months [○]	LSB					4%	4%		
Net exports of UK legal services	ONS	£3.0bn	£3.2bn	£3.8bn	£4.4bn	£3.9bn	£4.0bn		
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%	

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