

Horizon scanning report

(Covers the period 10 January 2020 to 13 March 2020)

The top five

The UK legal industry generated record revenues of £37.1bn in 2019, up 4.8% on 2018.

The final quarter saw turnover break £10bn for the first time, up 11% from the same period last year. Legal services now accounts for 1.6% of UK services output. Meanwhile, Thomson Reuters' annual review of the corporate sector estimates that alternative legal services providers (ALSPs) have seized 4.4% of the market and are growing strongly. ALSPs are providers that are not the traditional partnership model, including ABS and accountancy firms. The review also suggested that US firms are moving into the UK market aggressively. Further, it warned that under-investment in technology carries the risk that UK law firms are falling behind new competitors and their own clients.

In the Budget, the Chancellor announced £5m funding to trial specialist domestic abuse courts, plus further funding to tackle perpetrators through early interventions. Another £15m was allocated to improve sex assault victims' experiences in the justice system. Lawyers will face a new economic crime levy to tackle money laundering. In addition, £3 million will go towards launching a Royal Commission into the Criminal Justice System to improve the efficiency and effectiveness of the criminal justice process. The MoJ's budget will go up by £500m but this is not anticipated to be spent on areas such as legal aid. The Land Registry is to transition from a trading fund into part of central government. Elsewhere, a new round of the Regulators' Pioneer Fund has been confirmed, although no details are available.

A judge has ruled that an online lawyer-free divorce service – amicable - does not violate the Legal Services Act. The case arose from a lower court's conflict of interest concerns about amicable's role in helping a couple who wished to divorce uncontested. There were also concerns that its activities strayed into the reserved activity of litigation. Mr Justice Mostyn said the service had 'greatly improved access to justice for many people effectively disenfranchised from the legal process by the near total withdrawal of legal aid'.

The SRA is consulting on updated proposals to reform its compensation fund. It still proposes to cut the upper limit for awards from £2m to £500k, although could pay more in the public interest on an exceptional case-by-case basis. It also proposes a total cap of £5m on claims arising from a single or connected event. Applications for unpaid fees from barristers and expert witnesses would be excluded, while previous plans to exclude people living in wealthy households have been dropped. The SRA is to create a £30m contingency reserve for future payments relating to solicitor involvement in investment schemes.

The American Bar Association (ABA) passed a resolution encouraging state bars to explore new models of legal practice, but again stopped short of encouraging ABSs. Following opposition a draft resolution in favour of liberalising ownership was amended to state it should not be construed as recommending non-lawyer ownership. America's federal system means that each state has its own rules on lawyer regulation, although the ABA promulgates model rules which many take up. Meanwhile, Washington DC is seeking to try and remove the ban on ABSs. It already allows non-lawyer ownership but this comes with lots of restrictions which the state is now considering to relax.

Political developments affecting the justice sector

Suella Braverman replaced Geoffrey Cox as Attorney General following the cabinet reshuffle. Ms Braverman had earlier written an article calling for politicians to take back control from judges, raising fears about government curtailing judicial independence. Alex Chalk was appointed as minister responsible for legal aid policy and will shadow Lord Keen's brief in the Commons, including on legal services regulation.

Sir Robert Neill MP has been re-elected as chair of the Justice Select Committee. Members of the committee have been confirmed: Robert Butler (Con), James Daly (Con), Sarah Dines (Con), Maria Eagle (Lab), John Howell (Con), Kenny MacAskill (SNP), Dr Kieran Mullan (Con), Ellie Reeves (Lab), Marie Rimmer (Lab), Andy Slaughter (Lab).

The Ministry of Justice has started its Criminal Legal Aid Review by consulting on four proposals, which would result in an additional £32-50m to be split evenly between solicitor firms and barristers. The proposals include: new payments for litigators and advocates for reviewing unused material; additional payments for advocates with high volumes of pages of prosecution evidence; increased payments for advocates on cracked trials; and additional payments for litigators for work done on sending cases to the Crown Court.

The Ministry of Justice delayed implementation of the Road Traffic Accidents claims portal until 1 August. The proposed ADR option for unrepresented claimants was dropped. This was supposed to be a free service, funded by insurers, for claimants to secure independent advice where liability was denied or a settlement offer was too low.

The Legislation, Justice and Constitution Committee of the Welsh Assembly is conducting an inquiry on **Making Justice work in Wales**. It will have two parts: an initial fact-finding phase, followed by analysis of how the justice system could operate more effectively in Wales.

The consumer minister confirmed the government's intention to publish a consumer command paper in the spring. The paper will bring forward a package of reforms to make it easier and quicker for consumers to use ADR.

BEIS has launched a Reforming Regulation Initiative. It is an invitation to businesses and the public to help government ensure that regulation is sensible and proportionate.

The Committee on Standards in Public Life recommended that a separate regulator for AI isn't needed, but existing regulators need to do more to understand the challenges it poses. The committee endorsed the government's intention to establish the Centre for Data Ethics and Innovation on a statutory footing.

The government has commissioned the CMA to produce a regular state of competition report. It will set out research and analysis on how well competition is working across the economy. The CMA will publish a preliminary report by Summer 2020.

The government laid draft legislation which would allow judges' sentencing remarks in certain criminal cases to be broadcast from Crown courts. No other court user – including victims, witnesses, jurors and court staff – will appear on camera. The judiciary and Law Society both welcomed the development, but Amanda Pinto QC, chair of the Bar Council, warned of sentencing becoming an 'armchair, spectator sport'. Separately, a statutory instrument has been laid that will enable Court of Appeal family hearings to be livestreamed for the first time following a successful pilot.

According to information obtained by The Times, **more than 120,000 acquitted defendants have had to pay the so-called 'innocence tax' since 2014** when a means test for criminal

legal aid was introduced. Acquitted defendants can claim back fees under legal aid rates, but campaigners say these rates have been set too low. Over the period more than 126,000 defendants have paid for lawyers in crown court trials and been acquitted, accounting for a third of crown court trials. Defence lawyers are concerned that people are encouraged to represent themselves in order to avoid these costs, which can run into thousands of pounds.

A new Victims' Code has been published for consultation. It sets out the minimum level of information and service victims can expect from criminal justice agencies. For the first time, eligible victims will be automatically referred to the Victim Contact Scheme, which gives vital updates on offenders as they serve their sentence, including their potential release from prison. The new Code will also give victims greater flexibility over when and how a Victim Personal Statement can be made. It is also intended to pave the way for a Victims' Law, which will underpin victims' rights in legislation and further reinforce the support offered from the criminal justice system.

Regulatory and wider policy developments

Lord Reed has become President of the Supreme Court following the retirement of Lady Hale. Lord Hamblen has also joined the Supreme Court.

Phillip King was appointed interim Small Business Commissioner.

Tracy Vegro is the SRA's new executive director for strategy and innovation. She joins from the Financial Reporting Council and formerly worked at the Co-operative Group.

114 lawyers were made new Queen's Counsel. Only four are solicitors – all from City firms. There are 10 new honorary QCs, including Millicent Grant, former CILEx President.

Five associations representing law lecturers and academics have urged the SRA to delay the introduction of the SQE. In a letter, the associations argued that young people under 18 were being asked to make “potentially life-changing decisions” about their future career with “only fragmentary information” about how they might go on to qualify as solicitors. The signatories were the Association of Law Teachers, Institute of Advanced Legal Studies, Association of Critical Legal Scholars, Society of Legal Scholars and the Socio-Legal Studies Association. Meanwhile the University of Law has unveiled a three-part course to prepare students for the SQE, although it said the price was ‘still in discussion’.

The SRA has reported a sharp drop in the Legal Practice Course (LPC) pass rate from 66% to 56%. The research also showed the achievement gap between white and BAME candidates remains large: two-thirds of white students successfully completed the LPC, compared with 48% of Asian students and 35% of black students.

The SRA has proposed to change its rules to allow a solicitor carrying out immigration work to operate from an unregulated body. However, solicitors working in a business regulated by the Office of the Immigration Services Commissioner will additionally need to register with the organisation, which will in effect take precedence as their lead regulator when they are doing the work. The proposals are the SRA's attempt to clear up an issue that has remained unresolved since its new rules came into force in November.

The SDT has given the SRA a £63,000 costs order after describing a failed prosecution as ‘inadequate, wrong and ‘shambolic’. The Tribunal found no case to answer against Nabeel Sheikh over the costs incurred and claimed for following a criminal case handled by his firm. The tribunal found the SRA had failed to undertake an

independent investigation, failed to speak to potential key witnesses and failed to adduce expert evidence as to the proper amount of costs.

The Law Society and Bar Council strongly attacked plans by the Legal Ombudsman to extend its publication of information about complaints, arguing that it would not help consumers. However, the LSCP strongly supported the proposals and called for their “brisk” implementation. They were responding to LeO’s plans to publish its decisions in full, produce annual reviews of the most complained-about lawyers and firms, and in the long-term publish details of complaints resolved informally before final decisions are made.

Complaints about barristers have reached their highest level in five years. The BSB’s annual enforcement report reveals that it received 359 complaints from the general public in 2018-19, 18% up on the previous year’s total of 304. However, 91% of complaints by litigants in person were closed without investigation. In total the BSB opened 479 new complaints, the highest number since 2013-14. The number of complaints referred to disciplinary action also rose, to 50 cases, compared with 37 the previous year. Findings of professional misconduct were made in 84% of the cases heard by a tribunal and four barristers were disbarred, down from six in 2017-18. The report also showed the BSB failing to meet its performance targets – only 49% of investigations into external complaints were concluded within 8 months against a target of 80%.

The CLC published a discussion paper on conveyancing in 2030. The paper suggests the role of the conveyancer is going to change as much of the administrative side of the role becomes automated and foresees property lawyers focusing on advisory work. Further, quality of services – as rated by external comparison or feedback websites – will be decisive in where instructions go. The paper highlighted a range of questions to be grappled with, including whether government should mandate electronic conveyancing and the regulation of technology. Another issue was whether conveyancing would survive as a service delivered by separate providers or become part of what an estate agent offers.

The CLC issued draft guidance on third-party managed accounts (TPMAs). It says firms may only use TPMAs regulated by the Financial Conduct Authority and must gain prior authorisation from the CLC before entering into arrangements with clients to use them.

The Law Society warned that community care legal aid could ‘disappear altogether’ as a specialism as advice deserts expand. Its analysis shows that 79% of local authorities now have no publicly funded service for people wanting to challenge council community care decisions. The Ministry of Justice said the Society’s analysis is misleading and there are enough lawyers for people to access help from nearby providers or by phone.

Campaign group Justice criticised the lack of progress on judicial diversity. It said gender has seen the most positive developments over the last three years, with 'noticeable gains' on the circuit bench, albeit progress is 'fragile'. Applications from BAME people increased, but the number of BAME appointments has stagnated. Solicitors continue to apply for senior judicial office in much lower numbers than their proportion of the eligible pool and their relative success rates compared with barristers remain poor.

The lawyers’ welfare charity LawCare reported an upsurge in the number of callers complaining about bullying, with reports almost doubling last year. However, the charity was careful not to draw the conclusion bullying was necessarily on the rise, citing myriad reasons why people may be more willing to speak about the topic than previously.

Sir Andrew McFarlane, The President of the Family Division, is undertaking **a review of transparency in the family courts**. The review will consider the current arrangements

which regulate access by journalists and the public to, and the reporting of, information concerning proceedings in the Family Court.

The Civil Justice Council (CJC) set out detailed changes it believes should be made to the Civil Procedure Rules to help vulnerable parties and witnesses, including an amended overriding objective. The CJC called for more funding for litigant in person schemes but stopped short of calling for a ban on the cross-examination of vulnerable witnesses by unrepresented parties, a feature of the draft Domestic Abuse Bill.

Brent Community Law Centre has closed. The Law Centres Network said it had been “significantly weakened by unrelenting public funding cuts while demand for its help has grown”. It is exploring ways to re-establish a law centre service in the area.

The Legal Services Regulatory Authority (LSRA) in Ireland is consulting on unification of the solicitors’ profession and the barristers’ profession. The LSRA is due to make recommendations to the Minister for Justice and Equality by the end of September 2020.

Market developments

Legal Utopia launched a new app aimed at small businesses with a consumer version set to follow. The app, priced at £60 a year, uses AI technology to help SMEs diagnose and get guidance on their legal problems. It was developed following a joint research project with Westminster University funded by the EU which demonstrated that algorithms could effectively categorise legal problems using natural language processing. The consumer version of the app is expected to cost £12 a year.

Lawyers On Demand has used the SRA’s new regulations to launch a ‘challenger law firm’. The firm is a division within LOD providing advice to in-house legal teams in the technology, pharmaceutical, professional services, retail and fin tech sectors and will expand into employment law shortly. The relevant regulatory change specifically allows solicitors to work outside a regulated entity under a separate code for individuals.

A network for freelance solicitors that is “ready to launch immediately” cannot get off the ground because it cannot secure professional indemnity insurance. Iain Lock said he had spent the past year planning the Solo Legal Network but a lack of guidance to insurers from the SRA had frustrated his efforts. The SRA opened the way for freelance solicitors in November last year by introducing the Standards and Regulations (STaRs). Separately, the SRA has reported that 71 freelance solicitors have been registered so far.

Digital bank Revolut has entered the market through a tie-up with a ‘digital lawyer’ start-up. Revolut’s business customers can now access customisable legal contracts, policies and documents as part of the deal with legal services platform, Sparqa Legal.

Four legal businesses are among 30 chosen to join a flagship programme for mid-stage, fast-growing tech companies. The Upscale programme, run by Tech Nation, “helps the UK’s most promising tech companies to accelerate their growth and unlock the key to scaling successfully”. The legal businesses are online will-writer Farewill, lawyer-matching service Lexoo, SeedsLegal – an automated legal service for funding rounds – and contract review business ThoughtRiver. Over six months, the companies will receive more than 60 hours of support, delivered by over 20 “scale coaches”.

Japan's largest law firm has chosen to set up its European headquarters in Frankfurt over London due to Brexit. Nishimura & Asahi, which is the first of Japan's big four firms to expand into Europe, said it feared Brexit would stifle foreign investment in the UK.

Market intelligence and research

KPMG estimated that productivity in the legal services sector rose by 17% in the five years from 2013 to 2018. The report was commissioned by the Law Society to highlight the importance of the sector to trade negotiators. KPMG said that productivity levels of £100,500 per employee was almost double the UK average, higher than most other professions, and second only to management consultancy. KPMG also said the legal sector had the highest balance of trade among UK professional services. In addition, it calculated the value of pro bono work done by solicitors by applying average charge-out rate data. This worked at 43,800 solicitors working 1,446,000 unbilled hours in 2017 worth £439m.

Quarterly tracker data by Search Acumen shows the **number of conveyancing firms has fallen to a new low.** Its analysis cites the sharp decline in transactions due to Brexit. The total number of active conveyancing firms is now 3,920 down 5% from a year ago with transactions down 15% over the same period.

Analysis by IRN Research suggests consolidation in the will-writing market. The four leading brands – Co-operative Legal Services, Which? Legal, Irwin Mitchell and Slater & Gordon – have a combined market share of 15-18%. It also found that consumers were interested in other non-legal brands that sold will-writing services either directly or through white-label services, especially financial services companies. Its consumer survey found that a majority of probate matters are being handled on a fixed fee basis for the first time.

A report by Lexis Nexis claimed that the Bar is 'clearly at breaking point' despite barristers interviewed being bullish about their future careers. 70% of barristers believe their practice will grow or remain stable in the next three to five years, although civil barristers were more upbeat than criminal ones. However, views on the future of the bar were far less positive with wellbeing labelled as a 'highly critical concern'. Nearly a third of all barristers said cuts to legal aid were the biggest challenge they faced.

A survey of 700 women lawyers by The First 100 Years project found that 58% had **experienced or witnessed sexism first-hand**, but 46% of these did not complain for fear of the impact on their careers. Respondents also expressed concerns about discrimination and the dominance of men across the upper ranks of the profession, with 52% agreeing that it is still easier for men in their organisations to achieve a promotion.

A study by academics at Cardiff University has found that **lawyers with disabilities face daily discrimination because of ignorance and unconscious bias as well as blatant prejudice.** The survey found that 60% of disabled solicitors and paralegals and 45% of barristers had been bullied or treated poorly at work, most commonly facing ridicule or demeaning language. The authors noted the huge investment in diversity, but that this had focused on gender, socioeconomic background, race and sexuality, and not disability. SRA and BSB figures show that 3% of solicitors and 6% of barristers have declared a disability, although this is likely to be an underestimate. The report recommended that training places should be reserved for disabled candidates and disability pay gap reporting introduced.

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>									
Levels of shopping around: Individuals [○]	LSCP	22%	22%	24%	25%	25%	27%	27%	28%
Use of comparison/feedback sites: Individuals [○]	LSCP	1%	1%	1%	2%	2%	2%	2%	2%
Ease of shopping around: Individuals [○]	LSCP	57%	55%	54%	57%	57%	48%	54%	56%
Overall service satisfaction: Individuals [○]	LSCP	79%	80%	79%	78%	80%	80%	84%	84%
Providers publish prices on websites [○]	LSB					18%	18%		
Consumers who do nothing when dissatisfied [○]	LSCP	42%	44%	44%	42%	35%	49%	35%	37%
Public confidence in complaining about lawyers [○]	LSCP	49%	44%	45%	48%	43%	44%	45% B	
No action when have legal issue: SMEs [○]	LSB		8%		9%		10%		
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%		
<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	£35.4bn	£37.2bn
Number of active ABS	LAs	68	236	373	618	837	1,091	1,244	1,389
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	£3.5bn	£3.7bn	£4.1bn	£4.2bn	£4.7bn	£5.2bn	£6.6bn	
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	59%	60%

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