

Horizon scanning report

(Covers the period 12 April to 11 May 2018)

The top five

BEIS has published a Consumer Green Paper, Modernising Consumer Markets. The high-level message is that Government wants to ensure that modern consumer markets work for all, both now and in the future. There is a strong emphasis on competition policy and responding to the challenges raised by digital markets. There is also a focus on extending access to ADR and strengthening enforcement. The Government has ruled out making access to ADR mandatory across all sectors, but says it will consider this in sectors where there are high levels of high value complaints.

The SRA has increased the annual compensation fund levy that solicitors firms must pay by 42% to £778 - the highest cost since 2013/14. Individual levies have been put up by 25% to £40. The increases follow a year in which the SRA paid out £15.2m to members of the public and businesses suffering financial loss as a result of a solicitor's or firm's dishonesty or failure to return client money. Around £4m was paid for house deposits, while £3m was allocated for replacing people's stolen inheritance. The largest single payment was for more than £500,000, after a solicitor took a client's house deposit and mortgage advance. The increased levies are partly due to the growing threat of solicitors' involvement in questionable investment schemes and the rising number of interventions into firms.

In a consultation with the judiciary the Ministry of Justice said the aim of its £1bn **court modernisation programme** is to cut annual spending on the courts by £250m every year from 2022, with 6,500 out of 16,500 court staff losing their jobs by 2022 and the number of courts reducing further from the existing figure of 350. Meanwhile the National Audit Office (NAO) warned that HMCTS was "behind where it expected to be at this stage" of the reforms, saying it faced a "daunting challenge" to deliver the scale of technological and cultural change necessary to modernise the justice system and achieve the required savings. Part of the reason the NAO said HMCTS has fallen behind schedule was the reluctance of court stakeholders to embrace change.

The Lord Chancellor has announced a drive to increase judicial diversity. Measures include government funding for a new judicial education programme; support from Judiciary, Judicial College and legal professional bodies; an online education platform for potential candidates; and targeted support for underrepresented groups.

37 of 40 solicitors who responded responding to a Law Society survey oppose the application of a lower standard of proof in disciplinary cases, ahead of a consultation by the SDT expected soon. They cited the serious consequences of cases and the high prosecution success rate as good reasons for cases to be established 'beyond reasonable doubt', rather than on the 'balance of probabilities'. Respondents rejected a like-for-like comparison with other professions because solicitors are regulated differently.

Political developments affecting the justice sector

Andrew Tyrie has been nominated to be the new Chair of the Competition and Markets Authority. He is a former MP, Chair of the Treasury Select Committee and Chair of the Parliamentary Commission on Banking Standards. The post of CMA Chair is subject to a pre-appointment hearing by the Business, Energy and Industrial Strategy Select Committee.

The Queen has appointed **Rt Hon Sir Andrew McFarlane as the President of the Family Division** from 28 July 2018. This appointment follows the retirement of Sir James Munby.

Group action pioneer David Greene has won a Law Society presidential election that sets him on course to become president at Chancery Lane in 2020.

Lady Justice Hallett, vice-president of the criminal division of the court of appeal, has said the English justice system is hanging on to its reputation as the best in the world by its “fingernails” due to the government’s failure to provide adequate funding. She called for the entire criminal and civil justice system to be supported, saying a bias towards specialist commercial courts, which bring in lucrative, international business to London, could impact the quality of the entire system. Her comments came as over 100 chambers are refusing taking on new work in protest over successive cuts to their fees.

The Lord Chief Justice has said the effective operation of the courts in England and Wales is under threat due to problems of judicial recruitment, increasingly heavy workloads and deteriorating working conditions. Making his first appearance before the Lords constitution select committee in his new post, Lord Burnett of Maldon also highlighted the growing problem of death threats being made against judges on social media and the need to provide protection.

The Senior Salaries Review Body (SSRB), part of the Office of Manpower Economics, has started a consultation exercise on the judicial salary structure. The consultation follows a call for evidence which attracted 126 responses from judicial organisations and individuals. The consultation is framed around the SSRB’s current views about how both to simplify the salary structure and recognise degrees of leadership within the judiciary.

A leaked internal Ministry of Justice report has disclosed research into the number of **people facing criminal charges without a lawyer** in magistrates court, as well as a series of direct quotes from judges expressing their serious concerns about the impact on defendants, victims and the court process. Based on a sample of 1,031 cases collected from five magistrates courts over four weeks from November 2015, 13% of defendants had no lawyer. The research was conducted as part of the LASPO review.

The government has rolled out its online divorce service after a successful pilot. More than 1,000 petitions were issued through the new system during the testing phase – with 91% of people saying they were satisfied with it and barely any forms returned because of mistakes. Only 0.6% of around 1,100 online forms have been rejected since January, compared to an average of 40% for paper forms.

At the request of Ministers, the Civil Procedure Rule Committee has agreed to bring **package holiday claims within the fixed recoverable costs regime.** This will mean tour operators will pay prescribed costs depending on the value of the claim and length of proceedings. The rules will come into effect before the next summer holiday season. Meanwhile the Claims Management Regulator has said that activity in the area of holiday sickness is “much reduced”. Its finding follows an “intensive audit” and investigation. The

work came ahead of the government bringing holiday sickness claims within the scope of fixed recoverable costs, which should happen before the summer holiday season.

In a consultation on the secondary regulations needed to transfer regulation of claims management companies (CMCs) to the FCA, **the Treasury has proposed that CMCs will require separate permissions depending on the specific activities and sectors that they wish to operate in.** CMCs that want to advise, investigate and represent clients will need specific permissions for any of the six regulated areas, whereas those wanting just to 'seek out, refer and identify claims' will only need one permission.

The House of Lords Select Committee on Artificial Intelligence (AI) has concluded that **specific new laws to control possible harmful effects of AI are not yet necessary.** Instead it suggests that existing sector-specific regulators are best placed to consider the impact on their sectors of any subsequent regulation which may be needed. The Law Society's written evidence argued that regulation of AI would be premature at this stage.

BEIS has launched an independent review of the Financial Reporting Council (FRC), the regulator for auditors, accountants and actuaries. The root and branch review, to be led by Sir John Kingman, is due for completion by the end of 2018. It will assess the FRC's governance, impact and powers, to help ensure it is fit for the future.

BEIS published an industrial strategy for artificial intelligence. Alongside this it launched a **£20m next-generation services challenge fund,** which will create new opportunities for businesses and researchers to work together to develop the next generation of services for the accountancy, insurance and legal industries.

The Law Society has raised concerns about the way the SRA used its waiver policy to allow an unregulated HR consultancy to offer legal services from in-house solicitors. The move is the first of its kind and comes ahead of a rules change application on the SRA's Handbook reforms, which SRA wishes to implement in early 2019.

Regulatory and wider policy developments

Following a successful trial the **SRA has announced it is to formalise its 'innovation space' – a safe space which allows firms with novel ideas that may push the boundaries of the current rules to test them in a controlled way.** This includes a 'no enforcement' tool to guarantee a firm that the SRA will take no action if innovations bring the firm into technical breach of its rules. The SRA has also confirmed plans to simplify its system for granting waivers to regulations in order to promote innovation.

In his written evidence to the House of Commons' women and equalities commission, **Professional Richard Moorhead has said the SRA needs to take a tougher approach to non-disclosure agreements (NDAs)** in the wake of the Harvey Weinstein scandal. The SRA issued a warning notice on NDAs last month, telling law firms not use them to prevent the reporting of misconduct, particularly sexual harassment involving other employees or clients. Professor Moorhead suggested that the commission should encourage the SRA to report on the impact of its warning notice and that the LSB could oversee such a request. Addressing the commission, Paul Philip confirmed that an investigation into Allen & Overy was underway but conceded that the SRA should have asked to see the NDA earlier. The firm were advisers to Miramax at the time that the company, founded by Harvey Weinstein, entered into a highly controversial NDA with Zelda Perkins.

The SRA has confirmed it is reviewing Christian Legal Centre's role in the life-support battle that ended with the death of 23-month-old Alfie Evans. Three court of appeal judges criticised the role of supporters who may have "infiltrated or compromised" the legal representation of Alfie's parents, in particular a law student, Pavel Stroilov, who appeared to have taken the lead in representing Alfie's parents for the Christian Legal Centre. Stroilov was described in court as the legal adviser who had encouraged Alfie's father to pursue a private prosecution for murder against doctors at Alder Hey children's hospital.

The SRA is to appeal an SDT decision to suspend a solicitor found guilty of sexual assault as being too lenient. The solicitor concerned attracted widespread media coverage for his conviction on one count of racially aggravated assault and one of sexual assault. The SDT said that, as the criminal courts had already punished the solicitor, its role was to consider the protection of the public and reputation of the profession. The police had assessed that there was a low risk of a repetition of his misconduct and the tribunal said it did not consider that protection of the public was "an ongoing issue".

In an interview with The Times, Baroness Blackstone has said that addressing **sexual harassment at the Bar** is a key priority for her. Barristers have suggested the BSB rule, which obliges them to report to the regulator if they have reasonable grounds to believe that another barrister has committed serious misconduct, including sexual harassment, acts as a deterrent. So the BSB has agreed to discuss how a victim can informally raise a problem without losing control of the decision to report and seeing it escalate.

The proportion of solicitor trainees who have experienced mental health problems has more than doubled in the last year. In its 2018 resilience and wellbeing survey, the Law Society's Junior Lawyers Division found that 39% of trainees reported suffering from mental health problems, up from 19% last year. Meanwhile, the Criminal Bar Association (CBA) has said that criminal barristers are in the grip of a mental health crisis caused by significant increases in the amount of digital evidence, the number of historical sexual assault cases and long hours.

The SRA's diversity data shows that only 3% of solicitors self-identify as having a disability compared to 10% of the UK workforce. There has been a net increase in disabled solicitors of only 1% since 2014.

A handbook at the BPP university law school warns students that they may lose points if they do not adopt an extremely conservative dress code in their advocacy assessments. Women are advised not to wear short skirts or "kinky boots", while men should avoid wearing colourful socks and ideally should wear double-breasted or three-piece suits. BPP responded by saying the list was indicative guidance only to the sort of dress and behaviour which could adversely affect the advocate in court. Further, it was exceptionally rare for students to be penalised and the list would be reconsidered.

In a policy statement the FCA has set out final requirements and guidance on recovering the costs of the OPBAS. Fee rates payable by professional body supervisors (PBSs) are not yet decided but will be calculated will be based on numbers of 'beneficial owners', 'officers' and 'managers' (BOOMs) and relevant sole practitioners.

Market developments

Sir Stelios Haji-Ioannou, founder of EasyJet, has licensed the 'easy' name to easyConveyance, a new conveyancing comparison tool. The service compares

conveyancing quotes online from over 200 firms of solicitors and licensed conveyancers across the UK. Users are able to search by location, price and customer reviews, and instruct them online. There is a 'no sale, no fee' promise and online tracking of cases. Sir Stelios said: "It's time for the home buying process to be brought into the 21st century".

A host of leading law firms, the Law Society and universities have teamed up with Barclays Bank to launch the most significant lawtech incubator in the UK to date. The 'Eagle Lab' will open soon in Notting Hill, in west London, with the aim of creating a centre of excellence. Start-up community Legal Geek will organise events to encourage the sharing of ideas, and help entrepreneurs network and collaborate. The partnering law firms will provide feedback and guidance to help entrepreneurs develop, test and refine their products, with the potential to implement new technology into their firms. Academic support will come from UCL and the University of Liverpool, offering expertise in artificial intelligence and lawtech.

City law firm Rosenblatt is to become the fourth law firm to list on the London Stock Exchange's AIM market. The 19-partner commercial law firm, best known for its litigation work, is to be admitted on 8 May, joining Gateley, Gordon Dadds and Keystone Law.

Market intelligence and research

The Bar Council has published analysis on the link between ethnicity and success on the Bar professional training course and in attaining pupillage. This found that, other things being equal – some ethnic groups performed as well as their white counterparts, while others did not. Those performing well were those of Irish, Black Caribbean, Asian Indian and mixed White & Black African, White & Asian, and White & Black Caribbean ethnicity. Black African, Asian Bangladeshi and Chinese applicants were not performing as well and "for some the attainment gap is large. The analysis follows research commissioned by the BSB last year which showed that white candidates were twice as likely to secure pupillage as Black, Asian and minority ethnic (BAME) candidates.

The Department for Work and Pensions' Compensation Recovery Unit (CRU) reported that the number of personal injury cases registered with it fell by 13% to 853,615 in 2017/18. The biggest sources of cases, motor claims, fell year-on-year by 17% to around 650,000. Clinical negligence cases dropped 3% to 17,400 in 2017/18. CRU figures are considered to be an important yardstick for measuring claims numbers, as the DWP must be notified of details of any claim by the organisation or person paying compensation. Opponents of the Civil Liability Bill, which is designed to reduce the number of whiplash claims, have used the figures to argue that the reforms are unnecessary.

Figures from the Law Society Law Management Section's 2018 Financial Benchmarking Survey show that **fee income is up, profits are up, and lockup and borrowings are stable.** Total fee income has risen for the eighth year running, with a median rise of 5.3%. Median fee income per equity partner rose once again, by 8.6% to £684,000.

The NatWest annual legal benchmarking report, which focused on firms' financials, has found that **profit per equity partner (PEP) is down by 10%, although other performance indicators are up.** Although PEP was down, median fees per equity partner increased by 5.4% to £539,000. Meanwhile, profit margins overall were only down slightly – from 23% to 22% – and average fees per fee-earner fell only a little from £136,000 to £132,000. The authors suggested that firms focus too much on fees earned and time recorded and not enough on profit because these were easier to measure.

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	<i>£3,470</i>
LSB levy per authorised person	LSB	£31.65	£27.97	£25.36	£24.71	£21.55	£18.83	<i>£19.00</i>
Public trust lawyers to tell the truth [○]	LSCP	43% ^A	42%	43%	47% ^A	42% ^A	45%	
Public confident consumer rights protected [○]	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 [○]	LSB	15%	14%	13%	14%			
Levels of shopping around: Individuals [○]	LSCP	22%	22%	24%	25%	25%	27% ^B	
Use of comparison/feedback sites: Individuals [○]	LSCP	1%	1%	1%	2%	2%	2% ^B	
Ease of shopping around: Individuals [○]	LSCP	57%	55%	54%	57%	57%	47% ^B	
Overall service satisfaction: Individuals [○]	LSCP	79%	80%	79%	78%	80%	80%	
Providers publish prices on websites [○]	LSB					18%	18%	
Consumers who do nothing when dissatisfied [○]	LSCP	42%	44%	44%	42%	35%	49% ^A	
Public confidence in complaining about lawyers [○]	LSCP	49%	44% ^A	45%	48%	43% ^A	44%	
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	£31.8bn	£32.6bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	
Level of service innovation (over 3yrs) [○]	LSB				28%			
Regulation seen as barrier to innovation [○]	LSB				24%			
Firms state reduced prices in last 12 months [○]	LSB					4%	4%	
Net exports of UK legal services	ONS	£3.1bn	£3.3bn	£4.0bn	£4.3bn	£4.1bn		
Non-UK litigants using Commercial Court	Portland	70%	71%	77%	63%	66%	72%	

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