

## ANNEX B

### Horizon scanning report

(Covers the period 13 November 2017 to 15 January 2018)

#### The top five

**David Gauke was appointed as the new Lord Chancellor.** Mr Gauke, who worked at City firm Macfarlanes before his election as an MP in 2005, is the first solicitor in the role and the first lawyer since Ken Clarke left office in 2012. He is the sixth Lord Chancellor in six years.

**The Ministry of Justice published its response to the CMA's legal services market study.** It accepted recommendations to improve signposting to the Legal Choices website from GOV.UK, to consider whether there is scope to adapt existing data sources to collect additional data on unregulated providers and also to review whether there is a case for extending redress to consumers using unregulated providers. However, it ruled out a review of the independence of the regulators, instead leaving it to the LSB to strengthen the Internal Governance Rules. The response also said the government was unable to commit to a formal review of the regulatory framework at this time, but agreed to '*continue to reflect on the potential need for such a review, particularly as the market develops following the steps taken by the regulators to address the transparency and consumer knowledge issues...*'

**The Advertising Standards Authority (ASA) ruled that Law Society advertising of its Conveyancing Quality Scheme (CQS) "misleadingly exaggerated the membership requirements"** to make it sound like the accreditation process is more rigorous than is actually the case. The ASA noted that between 2014 and 2016, 291 out of 293 new applications had been approved. The ruling came after a solicitor complained to the ASA about a page on the Law Society's website in November 2016 that said: "All Law Society [CQS] firms go through rigorous examination and testing to demonstrate that they have a high level of knowledge, skills, experience and practice." All conveyancing firms which had repeated this claim in their advertising materials also had to withdraw it.

The BSB announced its intention to **withdraw from QASA** at a Westminster Policy Forum conference in November. It said that QASA was no longer consistent with its new approach to regulation so instead it will create a new way to assure the quality of barristers. The SRA said it was undertaking an additional programme of work to explore how best to ensure high standards of advocacy, which could be through QASA or another route, and would publish a position paper in the spring. CILEx Regulation has yet to declare its position. *LSB would need to approve an application from the regulators to withdraw the QASA regulations.*

**Deloitte is to become the final of the Big Four accountancy firms to set up an ABS.** It said the ABS, when approved by the SRA, would have two new offerings: managed services, such as automated document review and contract management; and consulting services. In addition, Deloitte will extend its existing legal services in employment law, tax litigation and immigration. The company announced it was also launching a complementary global legal management consulting business in 10 countries.

## Political developments affecting the justice sector

**The Government published its Industrial Strategy.** Plans relevant to LSB include publishing a review of the competition regime by April 2019 and a consumer green paper to tackle areas where markets aren't working well. The strategy highlights the need for an 'agile approach to regulation that promotes innovation, the growth of new sectors, and innovative market entrants while ensuring effective protections for citizens and the environment'. Regulation and the rule of law were both seen as current strengths and foundations on which a successful modern industrial strategy can be built.

**The Small Business Commissioner has started work.** The role of the office is to provide general advice and information to small businesses on matters such as resolving disputes, signpost small businesses to existing support and dispute resolution services and consider complaints about payment issues between small business suppliers and larger customers making (non-binding) recommendations on how the parties should resolve their disputes.

**The Lord Chancellor outlined steps to tackle 'race bias' in the legal system following the Lammy report but rejected a recommendation to set diversity targets for judges.** The government felt that addressing the pipeline – how people get into the legal profession in the first place – was the key issue. The government also sounded a note of caution on providing a choice of duty solicitor which it said needed further cost-benefit analysis. The recommendation to create an online feedback system on judges was rejected since it was felt this might be used as a vehicle for dissatisfied parties to complain about decisions.

HM Treasury has tabled an amendment to the Financial Guidance and Claims Bill which would place an **"interim fee cap" on the amount claims management companies or legal services firms can charge when providing claims management services related to PPI claims.** Legal services regulators would be expected to enforce the cap.

In a written parliamentary answer, justice minister Dominic Raab revealed that the **Ministry of Justice will have suffered a cumulative 40% real terms cut in its budget over the fiscal decade ending in 2020.** Current projections show the departmental spending limit will be £5.6bn by 2019/20. In real terms, the comparable budget in 2010/11 was £9.3bn and in the current financial year it stands at £6.4bn.

## Regulatory and wider policy developments

**Baroness Blackstone has been appointed as the BSB's new chair.**

**Robert Bourns was appointed as chair of the Law Society's new management board for a three-year term.**

**Professor Chris Bones was named the first chair of the CILEx Group.** The CILEx Group board will be at the apex of CILEx's new governance structure, the aim of which is to separate out its duties to the public interest, the profession and independent regulation. CILEx Regulation will continue to have its own independent board.

**The Brexit phase 1 agreement was broadly welcomed by the sector. However, there was little progress on recognition of qualifications.** Under the deal, after Brexit only those practitioners who have acquired another EU title for the purpose of establishment in another member state will continue to have their rights recognised, but they will have no right to cross other borders with their title. Lawyers who practise elsewhere in the EU under their home title, or lawyers based in the UK who wish to offer temporary services across borders

into the EU, were outside the scope of the agreement. However, an eventual trade agreement may cover these groups.

**TheCityUK has said the UK government needs to do more to protect Britain's legal services sector after Brexit if the country is to remain the world's "jurisdiction of choice"**. It said in a report that the government should plan to join, or incorporate into UK law, a host of international agreements governing contracts and various dispute resolution mechanisms as soon as possible. It also called for UK-qualified legal practitioners to be granted "mutual market access" to the EU and a bespoke exit deal relating to legal services.

**The SRA is to appeal the SDT's decision in the Leigh Day case.** The SRA has indicated that the appeal will be based both on points of law and contesting the tribunal's judgment. Leigh Day applied for the SRA to pay 60% of its final costs bill, which would amount to around £5m, but in a majority decision the SDT ruled there should be no order against the SRA for costs. Separately, the SRA declined a freedom of information request seeking disclosure of correspondence between it and the Ministry of Defence in relation to the case.

**Responding to the SRA's market transparency proposals, the LSCP praised the overall package of measures but identified shortcomings with regards to information on quality.** The Law Society claimed that forcing law firms to publish prices could "bias" clients in favour of choosing their solicitor on price rather than quality or consumer protection grounds. Research commissioned by the Society suggested that once consumers understood that some providers were unregulated, they were strongly put off them.

**The Bar Council strongly attacked plans by the BSB to force barristers to publish prices and internal complaints records.** The Bar Council said its concerns were centred on workability, proportionality and whether the BSB's plans would promote competition or transparency. By contrast the LSCP broadly welcomed the BSB's proposals, but called for disclosure requirements to extend across all types of barrister and stressed the importance of transparency on the quality of barristers including internal complaints records.

**The LSCP has warned that the second phase of reforms to the SRA Handbook would "compound existing complexities" and could further confuse consumers.** The proposals include allowing newly qualified solicitors to set up their own firms immediately after qualification and permitting freelance solicitors to carry out reserved activities.

**The BSB will use the civil standard of proof** in disciplinary tribunals from March 2019. Only cases coming to the tribunal after this date will be tried under the new standard, meaning there will be a 'crossover period' under which both standards will be applied.

**Andrew Walker, QC, new chair of the Bar Council, warned the lack of young barristers is now so acute that it could spell the end of 'sustainable, separate profession'.** He said the number of senior barristers with over 30 years' call is more than five times larger than in 1990, yet the number of barristers with less than five years' call had fallen by 10%.

**Andrew Langdon, QC, previous chair of the Bar Council, has written to all chambers reminding them of the professional body's policy of "zero tolerance" urging all barristers and chambers' staff who are victims of sexual harassment to "speak up".** The intervention came in the wake of an independent review of how Matrix Chambers handled a serious sexual misconduct allegation which found "institutional failings". In 2016 a survey of 1,300 women barristers by BSB found that two fifths of respondents said that they had been subject to sexual harassment, but only a fifth went on to report it.

**Only 18% of applicants for QC status were women**, but their success rate (64%) was higher than men (39%). 12% of applicants declared an ethnic origin other than white, with more than half appointed. There were only 10 solicitor applicants, of whom five were appointed. QC Appointments, the body that oversees the applications process, expressed concern at the continuing low number of both female and solicitor applicants.

The government's response to the House of Lords Constitution Committee report into judicial appointments said that **law firms continue to obstruct solicitors who aspire to be judges**. The percentage of judges in courts with a non-barrister background fell from 37% in 2014 to 34% this year. The government confirmed that solicitors will be one of the target groups for the Judicial Appointments Commission, with targeted outreach planned for solicitors, chartered legal executives and other under-represented groups.

There has been a surprise **14% increase in the number of students enrolling on the Bar professional training course (BPTC)**. It comes following a downward trend in recent years and despite concern among Bar leaders that the burden of student debt is having a negative impact on the junior Bar. 1,624 students enrolled on the BPTC for 2017/18.

A report by the SRA has revealed that **students from white backgrounds are almost twice as likely as those from black backgrounds to pass the legal practice course (LPC)**. The report also reveals a massive performance gap between LPC institutions, with one provider achieving a pass rate of 100%, compared to 30% for the worst performer.

HM Land Registry's new Business Strategy 2017-2022 includes looking at **publishing its comparative conveyancer data** to provide consumers with a real picture of how well their conveyancer is performing. In a later announcement the Land Registry said it would publish how many incomplete applications it receives from the top 500 conveyancing firms.

**Personal applicants can now apply for probate online service developed by HMCTS**. The service will continue to be developed to cover a broader range of applications.

The National Association of Licensed Paralegals, one of the two paralegal bodies which developed the **Professional Paralegal Register (PPR)**, has withdrawn from the scheme citing 'irreconcilable differences' over the values and purpose of the PPR.

In a House of Lords debate, Baroness Deech (former Chair of the BSB), Baroness Altman and Lord Whitty indicated their support for **complete separation of the legal regulators from professional bodies**. Baroness Deech also called for an overhaul of the Act and criticised the LSB for over-enforcing and placing burdens on lawyers. Government minister Lord Henley made no comment on whether the government would act on the consultation it held two years ago on independence, or on reviewing the reserved legal activities.

## **Market developments**

**JustBeagle – a new comparison website – has been launched which allows users to compare firms on price and user ratings**. The development is significant because it is built on a successful established consumer forum which attracts 1.7m unique visitors a year. It will provide 'all of market' coverage using information in open data format published by the SRA. *The LSB and LSCP were instrumental in persuading the regulators to publish their registers in open data format to facilitate the emergence of comparison websites.*

**Keystone Law – a 'dispersed' law firm made up of 250 self-employed senior lawyers – is set to become the third legal practice to list on the London Stock Exchange's AIM**

**market**, after announcing that it will raise £15m through the float. The placing valued Keystone at £50m on admission on 27 November.

ABS firm Rradar has become the **first law firm to be selected for the London Stock Exchange ELITE programme, which helps innovative new companies grow**. Rradar said it was selected because of its “genuinely disruptive and innovative approach” to two “huge industries” – insurance and the law.

**The BSB has authorised its first ABS without any barrister involvement**. Marlborough Law said that regulation by the BSB was ‘much more practical and proportionate than the SRA’, describing the difference between the two regulators as ‘mind-blowing’.

**Singapore has launched the Future Law Innovation Programme (FLIP)** to encourage law firms to adopt new technology, bring lawyers and entrepreneurs together and help ‘lawtech’ startups. Under FLIP, firms will receive up to 70% of the cost of new technology to re-engineer their working practices. The programme will be piloted for two years.

## Market intelligence and research

**LSB published the second wave of its research on the prices of common legal services**. Fees for conveyancing and lasting powers of attorney have fallen over the past two years, while they have risen for family work. The report also revealed that only 18% of law firms publish prices for any of their work in these areas on their websites – unchanged since the first wave of the research. The research also highlighted a geographical divide in fees, with firms based in the South East a third more expensive than those based elsewhere.

The SRA and Legal Ombudsman published jointly commissioned research into the **experiences and effectiveness of solicitors’ first-tier complaints handling processes**. The research suggests that only one-third of firms provide information about the Legal Ombudsman at the end of the complaints process, as required by LSB’s signposting rules. The research found the main barriers to making complaints to law firms are that consumers feel their solicitor will not handle their complaint fairly or even take notice of it.

Research by the BSB has found **graduates from BME backgrounds are half as likely to obtain pupillages as their white peers**. A second report, based on interviews with BPTC students and pupillage applicants, found that the Bar was still viewed as “an elite, white, male-dominated profession with long-established traditions”. It said the “findings suggest that from an early stage, a two-tier system emerges – one of privilege and education at public schools and ‘elite’ universities and the other lacking these advantages”.

The latest family court statistics on **litigants in person** showed the proportion of disposals in private law cases where neither party had legal representation was 35%, which has doubled since the LASPO changes removed legal aid in most instances.

**The Ipsos MORI Veracity Index 2017 found that 54% of the public generally trust lawyers to tell the truth**. This represented an increase of 2% on the previous year’s results. 81% of the population trusts judges. Nurses were the most trusted profession (94%) while politicians were the least trusted (17%).

Research conducted for the Law Society by Ipsos MORI shows **a statistical link between getting early legal advice and resolving problems sooner**. The Law Society claims it adds to growing evidence that the government’s legal aid cuts have been a false economy. It has called for legal aid for early advice to be reinstated in housing and family cases.

