

# Horizon scanning report

(Covers the period 20 November 2018 to 11 January 2019)

## The top five

**The CMA's statutory audit services market study** has recommended that firms' audit and advisory businesses be split into clearly defined separate operating entities, with separate management and accounts and remuneration, but stopping short of full structural separation. Meanwhile, Sir John Kingman's review of the FRC has recommended that it be replaced with an independent statutory regulator, accountable to Parliament, with a new mandate, new clarity of mission, new leadership and new powers. It found the FRC had been too "consensual" in its approach and criticised its approach to its own governance. The Government has launched an independent review into the "quality and effectiveness" of the UK audit market, which it said will build on the findings by Sir John Kingman and the CMA.

**The Ministry of Justice announced increased spending on the Advocates Graduated Fee Scheme (AGFS) by an extra £8m to £23m.** The Lord Chancellor also committed to bring forward a 1% increase on all fees to come into effect alongside the new scheme. The £23m funding will be specifically targeted at junior advocates. The Bar Council praised the move and the Lord Chancellor's wider emphasis on making criminal practice sustainable. Lucy Frazer QC, a justice minister, pledged to carry out a wholesale review of pay for criminal legal aid payments. The review, which will start in January 2019, will also examine wider issues, such as disclosure, following concerns raised by the justice select committee.

**The Financial Action Task Force (FATF) has published its latest assessment of the UK's anti-money laundering and counter terrorist financing system.** Overall it found that the UK has a well-developed and robust regime, however the report said that the government should continue efforts to address the '*significant weaknesses in supervision by the 22 legal and accountancy sector supervisors through: ensuring consistency in risk understanding; taking a risk-based approach to supervision; and ensuring that effective and dissuasive sanctions apply*'. It asks for close supervision of OBPAS in undertaking this work.

In its response to the women and equalities select committee's report on non-disclosure agreements, **the government said it is "strongly" encouraging legal regulators to take action over lawyers who advise on the use of potentially unenforceable provisions in NDAs.** However, it said the recommendation to make it a criminal offence to propose an NDA that is unenforceable could itself be difficult to enforce. More broadly, the government agreed about the need for better regulation of NDAs and clearer information for employees. Meanwhile, the SRA has asked the country's biggest law firms to explain how they prevent and respond to allegations of sexual harassment. It has updated its 2015 Balancing Duties in Litigation report, which now includes a section on NDAs and harassment, covering both work done for clients and firms themselves. And the Law Society issued a practice guidance note, reminding solicitors that when drafting NDAs their duty to act in their client's best interests can be trumped by their duties to the court and to the administration of justice.

**The SRA has disclosed that it spent £3.1m on the unsuccessful prosecution and appeal relating to the Leigh Day case.** The costs are made up of £222,000 for the initial investigation, £1.9m for the SDT and £972,000 for the appeal. It has also published some of its correspondence with the Ministry of Justice and Ministry of Defence relating to the case.

## Political developments affecting the justice sector

**The Lord Chancellor has hailed the impact of ABS** in driving competition and fostering innovation in the legal market. David Gauke also praised the way that law firms are embracing technology to maintain the UK's international position. In a speech to mark the launch of TheCityUK's annual report on the legal market, he said: "*The entrance and growth of alternative business structures has provided additional choice for consumers, driven competition and fostered innovation, and in part played a crucial role in maintaining the attractiveness of our jurisdiction. As the report highlights, none of this would have been possible without our open, progressive, and consumer-oriented regulatory regime.*"

Baroness Shami Chakrabarti, the shadow attorney general, said that **a Labour government would reform barristers' training** by putting it back in the hands of the Inns of Court and ending the "profiteering" by the current commercial providers. She criticised a "racket of Bar courses that offer too many places for too high fees to too poor students, many of whom have no prospect of the pupillage that remains the gateway to the profession". She also pledged "a radical reversal of the cold hand of Coalition austerity politics on legal aid and the court system" and criticised the extra funding for AGFS as a "sticking plaster".

**An investigation by the BBC has claimed the legal aid network has been 'decimated' by legal aid cuts.** Its analysis of official statistics shows that up to a million people live in areas with no legal aid provision for housing advice, with a further 15 million in areas with one provider. It also found around a million fewer claims for legal aid are being processed each year and 1,000 fewer legal aid providers were paid for civil legal aid work than in 2011-12.

**BEIS has announced funding for three research projects on aspects of AI.** One project, Unlocking the Potential of AI for Law, will be led by Professor John Armour at the University of Oxford. It will bring academics, lawyers, businesses and programmers together to develop the skills, training and codes of practice to deliver the benefits of AI. Separately, contract review business ThoughtRiver was awarded a £400,000 grant to develop 'thinking AI'.

In the 2018 Autumn Budget, the Centre for Data Ethics and Innovation was commissioned to study the **use of data in shaping people's online experiences, and the potential for bias in decisions made using algorithms.** The Government also appointed the Centre's board members and confirmed its terms of reference to: analyse and anticipate risks and opportunities; agree and articulate best practice; and advise on the need for action.

**The Joint Committee on Statutory Instruments (JCSI) has questioned whether the Lord Chancellor is acting beyond his powers by introducing a sliding scale for probate fees.** Echoing concerns it has raised previously, its report said that any fee must bear some relationship to the service provided. It also warned that the proposals appear to be ultra vires as they amounted to taxation rather than recouping the costs of an administrative process.

**The Ministry of Justice has launched a call for evidence on reform to the regulation of bailiffs.** Amongst other issues it is seeking views on the complaints process, suitability of current bailiff regulation and the possibility of an independent regulator. Meanwhile, Citizens Advice published a report suggesting that 2.2m people were contacted by bailiffs in the last two years, of whom more than a third felt bailiffs had broken the current regulations.

The Irish Government has backed a joint initiative of the Bar of Ireland, the Law Society and the wider legal community to **promote Ireland as a post-Brexit centre for international**

**legal services.** Taoiseach Leo Varadkar told Irish media that legal services was one area where Ireland could 'take some business from the UK'.

## Regulatory and wider policy developments

**Richard Atkins QC has succeeded Andrew Walker QC as Chair of the Bar Council.**

Jonathan Oxley, Competition Group Director and an Executive Board Member at Ofcom, has been appointed the new **Chief Executive of UKRN.**

**The SRA has said it is pushing back reform of PII to prioritise reform of the compensation fund.** Paul Philip told delegates at the SRA's compliance conference that it would not discuss a response to the PII issue until next spring at the earliest.

In his keynote address to the annual bar conference, **Lord Sumption predicted there will be fewer and more specialist barristers in the future.** He forecast that business disputes – particularly international ones – would account for a larger proportion of the Bar's work. The judge also criticised some of the Bar's actions in response to legal aid cuts, describing much civil legal aid as desirable but not fundamental and competing with other priorities.

Changes by the BSB mean that **pupil barristers will be paid a new mandatory minimum salary from next year.** Pupils outside London will be paid a minimum of £15,728 while those working in the capital will be paid at least £18,436, based on pay recommended by the Living Wage Foundation. At the moment chambers have to pay a minimum of £12,000.

The BSB found that **58% of barristers were fully compliant with new CPD regulations** introduced two years ago. A further 29% were compliant but received feedback on ways to achieve best practice for the future. Common areas of feedback were that the barrister had a limited range of learning objectives, or the objectives were too generic; recorded a limited range of CPD activities; or showed limited reflection on their CPD activities, how they met their planned learning objectives or consideration of future learning objectives.

In a paper on technology, **the SRA has said that law firms must be able to explain 'automated decisions', including those involving AI.** It also said AI systems needed to be carefully trained and monitored, in many ways a similar task to that of introducing and supervising a trainee. The SRA said it expected 'algorithmic accountability and auditability' from firms, but does not intend to impose any specific rules on the use of IT or AI; instead, firms would need to apply the SRA Principles and their own ethical judgement.

**The EU's expert group on AI has published draft ethics guidelines** that underline it must be human-centric and trustworthy to be effective. The experts said they aimed to foster "responsible competitiveness" and not stifle innovation, so people could "reap AI's benefits". The group claimed its first draft guidelines were different from other attempts to define ethical AI because they set out concrete proposals as well as broad principles. Meanwhile, the EU is due to make policy recommendations on regulating AI in May 2019.

**QC Appointments (QCA) has announced changes aimed to help women apply for silk.** Since evidence suggests that women are more reluctant than men to ask judicial assessors in advance to provide assessments, applicants will instead be asked to list prospective assessors for the selection panel to choose from. On a second consultation on character, conduct and integrity, the QCA is to widen the definition of various competencies to ensure it is clear that they encompass a requirement to act cooperatively with the court and their opponents. However, it has decided against introducing social media trawls or other activities that would extend the extent to which unsatisfactory behaviour outside the field of

advocacy not amounting to professional misconduct is taken into account. QCA will also not seek to widen the grounds on which existing QCs may have the designation removed.

**108 new silks have been appointed.** Of these, only four were solicitors – all male. Over 60% of women applicants were appointed, although the number of applicants remains comparatively low. 18 BAME applicants were appointed, which is a record number.

**Lady Hale, President of the Supreme Court, has said the judiciary needs to be more diverse** so that the public feel those on the bench are genuinely “our judges” rather than “beings from another planet”. She called for balanced gender representation on the supreme court as well as swifter progress promoting those from minority ethnic backgrounds and with “less privileged lives”, although said that she did not favour positive discrimination policies. She also described the compulsory retirement age of 70 for judges as a “waste of talent”.

**The Bar Council has called on the BSB to review the rules on fair allocation of work for barristers.** The rules cover both fair allocation of work within chambers and ensuring that discriminatory requests from solicitors “for a barrister of a particular sex or race for a particular piece of work” are rejected. The Bar Council’s intervention followed Rehana Popal, an Asian female barrister at 10 King’s Bench Walk, revealing that she had been asked to return her brief by a solicitor because the client wanted a “white male barrister”.

**CILEx has called for changes to the legal system that would place legal executives ‘on a par’ with solicitors.** Among its key aims, CILEx wants to open up senior judicial roles to chartered legal executives and change the rules so its members can apply for court and tribunal posts higher than district judge. CILEx also wants restrictions lifted on its lawyers selling their services abroad post-Brexit, and on them providing certain legal services. For example, legal executives cannot prove a Power of Attorney by means of a certified copy.

**The Civil Justice Council has called for the introduction of a ‘notice to mediate’ system, used in British Columbia, to increase use of alternative dispute resolution.** Responses to its draft report had not favoured blanket compulsion of ADR. Under the proposals, there would be automatic referral to ADR with a very narrow range of opt-outs. The report argued that online dispute resolution “in all its many forms must establish a set of standards in order to gain further acceptance”. It also called for mediation bodies to consider collaborating over public legal education so there was a single “voice of mediation”, and for a new website to be set up hosting information about all kinds of ADR.

The Law Society is beefing up oversight of its **Conveyancing Quality Scheme (CQS)** by introducing onsite compliance checks and many more desk-based assessments (DBAs). The lack of visits has been a longstanding criticism of CQS, of which 3,037 law firms are members, and up to now the society only carried out about 20 DBAs a year – leading to questions about how meaningful the accreditation truly is.

**Disciplinary action against judges and magistrates has fallen slightly despite a significant rise in complaints about inappropriate behaviour or comments.** In its annual report for 2017/18, the Judicial Conduct Investigations Office said 498 complaints were made about poor behaviour by office-holders – up 17% on the previous year. The JCIO removed 11 magistrates, two judges, four tribunal judges and two coroners in 2017/18. In a further 18 cases an office-holder was reprimanded, warned or given formal advice.

**LawWorks has said that 76% of its clinics reported an increase in demand for pro bono legal advice over the previous year,** and 52% reported an increase in the number of clients in crisis or distress. A project looking for the first time at outcomes found that over 75% of clients said that, as a result of the information or advice they received, they felt more

confident in dealing with their problem and had a better understanding of their situation. Together, the 229 clinics across the network dealt with 60,000 enquiries (up 2%) and gave specific legal advice to 39,937 clients – a 14% increase on the previous year.

**The CMA has published proposals to tackle the substantial ‘loyalty penalty’** affecting consumers – where companies charge existing customers more than new ones. Following a super-complaint by Citizens Advice, the CMA has found a loyalty of penalty of £4bn across five markets – cash savings, mortgages, household insurance, mobile phone contracts and broadband. It has highlighted practices including: continual year on year stealth price rises; costly exit fees; time-consuming and difficult processes to cancel contracts or switch to new providers; and requiring customers to auto-renew or not giving sufficient warning their contract will be rolled over. An update on progress will be published in six months’ time.

## Market developments

Analysis by Legal Futures shows that **listed legal businesses performed well in the stock market in 2018** against a backdrop of both the FTSE and AIM markets falling. The standout performer was Keystone Law, which ended the year up 88%.

**Legal comparison website The Law Superstore has relaunched** 18 months after its takeover by reallymoving.com. It has switched its business model from offering panel solicitors’ firms solid instructions to a simpler, lower-cost lead-generating model.

**KPMG is aiming to almost double headcount in its global legal services arm** to more than 3,000 lawyers in the next few years, as the Big Four firm also plots ambitious growth in the UK. The legal services arm operates four core service lines: business structures and transactions; tax disputes and investigations; employment and immigration; and ‘new law’ and global, which handles filing and regulatory process work for clients.

**Kent County Council's legal services spin-off today claimed to have turned around its initially loss-making business.** Invicta Law announced an underlying trading profit before tax of £302,000 for the six months of trading to 30 September 2018. The business says this compares favourably with a £428,000 loss in the first half of 2017/18.

**A new app that offers users the full range of consumer legal advice and support for £24 a month is to be piloted** in the coming weeks ahead of a roll-out early next year. LegalDefence is the first major push in the UK to establish the concept of pre-paid legal services, which is long established in the US. It is the first overseas venture by LegalShield, an American company that has 1.7m subscribers to the product in the US. The legal advice will come from Slater & Gordon, supported by an AI-based chatbot called Gordon. LegalDefence said it will move to offer a similar service to businesses later in 2019.

**Clifford Chance has launched a Singapore innovation lab.** Create+65 is supported by the Singapore Economic Development Board and is operating in collaboration with the Singapore Academy of Law’s Future Law Innovation Programme (FLIP) – a two-year pilot programme launched this year to encourage legal tech in the city-state. Linklaters and Clyde & Co were the first international firms to become members of FLIP.

Seven businesses which between them have advised on some 150 law firm mergers have formed a **professional association for the merger advice sector.**

A former police officer has created a venture linking people with around 100 other **former police officers acting as McKenzie Friends**. It is now three years since the judiciary made proposals to ban fee recovery by McKenzie Friends, but there is no update on these plans.

## Market intelligence and research

TheCityUK's annual report on the legal market has claimed that **Brexit will not change London and the UK's position as a global leader in legal services**. It said revenue at the top 100 firms grew by 10% last year to reach £24.2bn, while the UK trade surplus generated by legal services has nearly doubled over the past 10 years to £4.4bn in 2017.

A study by HiiL based on interviews with 70,000 people in 12 countries found that **most people around the world cannot find a just solution to their legal problems**, so a new 'value proposition' is necessary that provides user-friendly justice at scale, is not based on litigation for resolution and has legal aid lawyers joining with innovators. 70% of the estimated 1bn people globally who had a new justice problem each year did not find a satisfactory resolution and almost half of them took no action at all. However, the authors predicted potentially lucrative rewards for innovators who could deliver affordable justice, not least because people were willing to pay for fair solutions to their urgent problems.

A survey carried out by the Bar Council for The Times has suggested that **judges are one of the main sources of bullying in the legal profession**, while lawyers are being harassed and propositioned by senior colleagues.

A survey has found that **26% of trainee solicitors claim to be paid below the minimum wage**. However, this represents a significant fall since a year ago and the number of hours worked has also fallen slightly. The Law Society recommends that law firms and legal departments should pay their trainees £21,561 in London and £19,122 outside the capital.

A report by Jomati suggests that a **lawtech "tipping point"** that will revolutionise law firms – and potentially upend their whole business models – could be less than a year away. It argues that, at present, most legal AI tools are priced too high to make it worthwhile for law firms to adopt them but that is about to change in the contract review space. The report predicts the traditional law firm pyramid model (a handful of partners at the top, lots of trainees and associates at the bottom) is potentially set to steepen dramatically into a spike.

According to an international survey, **almost half of young lawyers see resistance to innovation by their firms as the biggest threat to the profession**. The rise of alternative providers and the commoditisation of legal services also featured prominently. Significantly fewer young lawyers than two years earlier were fearful of technology replacing them.

Analysis by Search Acumen has found that **the number of active conveyancing firms has fallen to its lowest level** since HM Land Registry started to publish data in 2011. There was a 2% fall over the last twelve months, and a 15% fall since 2011. Its analysis suggests that smaller conveyancers been consolidated, while large players have increased market share. While there has been a 3% fall in conveyancing transactions since last year, there has been a 14% rise in the last five years. Meanwhile, the CLC's annual regulatory return has found that ABS are significantly more positive about their future than traditional practices, being almost twice as likely to anticipate growth over the next 12 months.

The Ipsos MORI Veracity Index – the longest running poll on trust in the professions – has revealed that **nurses are the most trusted of the professions** and advertising executives the least trusted. Judges were trusted by 83% of the population. Unfortunately lawyers were not included in the latest edition of the survey.

**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 <sup>o</sup>	LSCP	43% <sup>A</sup>	42%	43%	47% <sup>A</sup>	42% <sup>A</sup>	45%	45%
Public confident consumer rights protected <sup>o</sup>	LSCP	49%	46%	46%	50% <sup>A</sup>	46% <sup>A</sup>	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 <sup>o</sup>	LSB	15%	14%	13%	14%			
Levels of shopping around: Individuals <sup>o</sup>	LSCP	22%	22%	24%	25%	25%	27% <sup>B</sup>	27%
Use of comparison/feedback sites: Individuals <sup>o</sup>	LSCP	1%	1%	1%	2%	2%	2% <sup>B</sup>	2%B
Ease of shopping around: Individuals <sup>o</sup>	LSCP	57%	55%	54%	57%	57%	47% <sup>B</sup>	58%A
Overall service satisfaction: Individuals <sup>o</sup>	LSCP	79%	80%	79%	78%	80%	80%	84% A,B
Providers publish prices on websites <sup>o</sup>	LSB					18%	18%	
Consumers who do nothing when dissatisfied <sup>o</sup>	LSCP	42%	44%	44%	42%	35%	49% <sup>A</sup>	35% A,B
Public confidence in complaining about lawyers <sup>o</sup>	LSCP	49%	44% <sup>A</sup>	45%	48%	43% <sup>A</sup>	44%	45% B
No action when have legal issue: SMEs <sup>o</sup>	LSB		8%		9%		10% <sup>B</sup>	
Levels of shopping around: SMEs <sup>o</sup>	LSB						22%	
Ease of finding provider: SMEs <sup>o</sup>	LSB				25%		50%	
Lawyers perceived as cost-effective: SMEs <sup>o</sup>	LSB		12%		14%		11% <sup>A</sup>	
<i>Increasing innovation, growth and the diversity of services and providers</i>								
UK wide legal services turnover (uninflated)	ONS	£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) <sup>o</sup>	LSB				28%			26%
Regulation seen as barrier to service innovation <sup>o</sup>	LSB				50%			40% A,B
Firms state reduced prices in last 12 months <sup>o</sup>	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: <sup>o</sup> = Survey source, <sup>A</sup> = Significant differences to previous figure, <sup>B</sup> = Significant differences between oldest and newest figure