

Annex B, CEO report

Horizon scanning report

(Covers the period 18 February 2018 to 13 March 2019)

The top five

Lord Keen has suggested there is “room for review” of the legal regulation regime, made more urgent by developments in technology. He said the entry of technology-led organisations into the legal market would “raise issues over regulation of the delivery of legal services and indeed the definition of legal services themselves”. Meanwhile, Professor Stephen Mayson has published the latest batch of papers to inform his independent review of the regulatory framework. For now, he has not indicated a view on regulatory structures. In a submission to the Mayson review, the Law Society argued that Brexit and the SRA Handbook reforms meant now is not the “appropriate time” to embark on wholesale reform.

The High Court has rejected ICAEW’s judicial review of the Lord Chancellor’s decision that its members should not be allowed to handle tax-related litigation, advocacy and legal instruments work. However, it quashed the Lord Chancellor’s decision on the administration oaths on the grounds that it had not been sufficiently explained; this must be reconsidered. The ruling said that there was nothing in the Act binding the Lord Chancellor to use LSB’s rules as the “sole benchmark of regulatory independence”. ICAEW commented that the judgment “makes a lottery of all future applications” and it would now consider its position.

Marking International Women’s Day, the Law Society published 39 recommendations to help legal businesses deliver equality for women in the law. These formed part of the latest report in the Women in Leadership in Law project, which has involved research with 12,000 legal professionals worldwide. The research suggests that unconscious bias is the greatest barrier to career progression for women solicitors, whilst where they live is also a factor – London has the lowest proportion of female partners. The culmination of the project will be an international symposium on the power of gender equality to transform the business of law in June in London. Meanwhile, three women working in the field of law firm innovation are launching a new network next month – She Breaks the Law – to support female leaders who are breaking the mould and delivering legal services differently. And, radical changes to flexible working arrangements, along with mentoring and sponsorship programmes, and improvements to parental leave, topped the list of reforms that women shortlisted for The First 100 Years project said are needed to bring about meaningful change in the profession.

The Chair of the Criminal Bar Association has threatened unilateral action over working hours if “sensible parameters” for sitting hours and overnight working are not agreed. He wrote in his newsletter that the CBA and Bar Council had endeavoured to agree such parameters with the senior judiciary.

OPBAS has published a summary of themes based on its inspection visits to the 22 professional body supervisors (PBSs) with anti-money laundering/counter-terrorism responsibilities, which include the SRA and other legal services regulators. It concluded that nearly half of legal regulators do not undertake enough supervision due either to lack of resources, structure or focus at senior levels. In a speech OPBAS director Alison Barker said the accountancy sector and many smaller regulators were more focused on representing

members than “robustly supervising standards”. OPBAS has asked all PBSs to develop a suitable strategy to address its findings through individual plans.

Political developments affecting the justice sector

A government paper on the implications for business and trade of a no-deal Brexit spelt out risks for the legal sector, including a loss of market access and an increase in non-tariff barriers. The paper estimated that the UK economy would be 6.3-9% smaller after around 15 years than it otherwise would have been as a result.

In his Spring Statement, the Chancellor confirmed that the government will hold a Spending Review, which will conclude alongside the Budget. This will set departmental budgets, including 3 year budgets for resource spending, if an EU exit deal is agreed.

The government has announced proposals for **new legal measures to protect workers from misuse of non-disclosure agreements (NDAs)**. These include legislating that workplace confidentiality agreements cannot be used to prevent people reporting harassment or discrimination to police, and extending the law to ensure the worker agreeing to confidentiality agreements receives independent legal advice on the limitations. Meanwhile, Professor Richard Moorhead has told the women and equalities select committee that lawyers could be committing a criminal offence in the way they draw up NDAs. He suggested that confidentiality clauses have been written into NDAs which are ‘plainly unenforceable’ and would be regarded as taking advantage of less well-resourced employees who have alleged discrimination. And, where individuals have been encouraged not to speak to regulators or the police, this could constitute perverting the course of justice.

The Ministry of Justice has awarded £900,000 to organisations based in some family courts to provide in-court support to victims of domestic abuse. The two recipients are the Personal Support Unit and the Citizens Advice Witness Service. Meanwhile the government has brought forward legislation to abolish the ‘same-roof’ rule, under which victims of violent crimes which took place before 1979 have been blocked from receiving compensation if the attacker was someone they were living with at the time of the incident.

Charitable organisations have urged the government to reconsider proposals to increase some probate fees so that estates including bequests to charities are not adversely affected. In an open letter to justice minister Lucy Frazer QC, the Institute of Fundraising, Remember A Charity, the Institute of Legacy Management and the National Council for Voluntary Organisations warned that the proposed new fee structure would have unintended consequences. The charities have suggested a reduction or discounted rate on estates that include a legacy gift.

A review of the Criminal Injuries Compensation Scheme has begun. CICS awards taxpayer-funded payments to victims injured as a result of violent crime, paying out over £150 million in 2017/18. The review will consider among other things, concerns around the eligibility rules, the definition of ‘violent crime’, and the type of injuries that are covered.

HMCTS has put the completion date for its court modernisation programme back by a year. The revised proposed finish date of the £1bn project will now be 2023. Ministers said they had learnt from the services already reformed and feedback received from the Public Accounts Committee and National Audit Office. Meanwhile, academic research led by Dame Hazel Genn has called for more detailed evaluations of the reform programme, including an assessment of its impact on vulnerable litigants.

The government's response to its call for evidence on the **impact of social media on criminal trials** has concluded that it does not currently pose a serious threat. However, a new webpage has been created on gov.uk to promote the safe use of social media and the Judicial Office has begun work to produce new guidance for jurors.

50 estate agents received unannounced inspections as part of a week-long crackdown on **money laundering in the property industry**. HMRC also published details of latest fines, which included a £215,000 fine for Countrywide Estate Agents.

The Business Secretary has announced that the **Financial Reporting Council will be replaced with a new regulators called the Audit, Reporting and Governance Authority** following Sir John Kingman's review. The new body will regulate the biggest audit firms directly and have powers to make direct changes to accounts rather than need to apply to court to do so. There will also be greater sanctions available in cases of corporate failure. BEIS has started a consultation on its proposals.

A review by Harvard Professor Jason Furman, commissioned by HM Treasury, has found that **tech giants do not face enough competition and UK competition rules must be updated for the digital age**. Among the recommendations are that a new digital market unit be set up, regulators' powers to tackle anti-competitive practices be strengthened and that the CMA should launch a formal market study into the digital advertising market.

The House of Lords communications committee has called for a new regulatory framework for digital services to hold big technology companies accountable, including a new Digital Authority to oversee the 12 UK regulators responsible for the digital market. It has identified ten principles which should guide the authority's work, including transparency, accountability, respect for privacy and freedom of expression.

Regulatory and wider policy developments

Wanda Goldwag has been appointed chair of the Financial Services Consumer Panel.

Richard Collins, head of policy at the SRA, is to leave the organisation. Mr Collins, who has been at the SRA for nine years, had recently replaced Crispin Passmore in the role.

Anna Bradley has given her first media interviews as SRA Chair. She said that the relationship with the Law Society had reached a place of maturity and was less concerned about full institutional separation. She also promised to consider the SRA's practices on transparency in light of the LSB's performance report.

The judiciary has issued its consultation response on McKenzie Friends, three years after making proposals on the issue. The response concluded that the proposal to ban fee recovery by paid McKenzie Friends was for the government to decide. However, it noted continued judicial concern about the practice and called on individual judges to enforce existing guidance on granting rights of audience to McKenzie Friends only in only exceptional circumstances. An "overwhelming" number of responses had opposed a ban.

The Equality and Human Rights Commission has started a legal inquiry into whether the criminal justice system treats people fairly. The inquiry will focus on people with mental health conditions, cognitive impairments and neuro-diverse conditions including autism and ADHD. It will look in particular at defendants' experiences after they are charged and before they reach a trial, as this is when key decisions are made. The inquiry will also

examine how steps to modernise the court system such as the use of video-link hearings, are affecting defendants' ability to participate in legal proceedings.

The Lord Chief Justice has called for action to improve social diversity at the top of the profession, as an important part of improving judicial diversity. He also spoke of the need to investigate the issue of sexism in the professions and courts more closely.

Dana Denis-Smith, founder of The First 100 Years project, has called **for quotas on law firms for the number of women at both equity partner and management level**. She also called for an end to salaried partnership status, which enables firms to count women as a partner but without giving them voting rights.

The Lord Chief Justice has set up an advisory group to provide senior judges with guidance on artificial intelligence, to be chaired by Richard Susskind. The purpose of the new group is to offer guidance on the likely impact of developments in AI on the judiciary and court system, on ways of ensuring that judges are sufficiently trained on AI and its impact, and "the most pressing legal, ethical, policy, cultural and economic effects of AI".

The CMA has published proposals to further put consumers at the heart of its work. These include a new statutory duty on the CMA, and courts applying competition and consumer laws, to treat the interests of consumers, and their protection from detriment, as paramount. Also, a new statutory duty on the CMA to conduct its investigations quickly, supported by powers to take action against firms supplying misleading or false information. And, a statutory responsibility to address the adverse effect on the consumer in all aspects of the CMA's markets work. The Business Secretary welcomed the proposals and it is likely these will be consulted on as part of the consumer white paper expected in the summer.

National Trading Standards has published guidance on disclosure of referral fees. The government has said this will be given a year to prove its effectiveness otherwise a ban may result, which may particularly affect dealings between estate agents and lawyers.

Market developments

Sheffield Hallam University has set up a standalone ABS so it can offer a law degree that incorporates mandatory work experience into every year of the course. SHU Law will charge for some services but will expressly not seek to compete with local law firms. It will initially focus on commercial litigation, personal injury and small claims work, ahead of expanding into employment and family over the next 18 months. King's College London also launched a new initiative giving students a chance to advise clients pro bono by teaming up with 'Big Four' professional services firm PwC. Meanwhile, Nottingham Law School, which set up the first law school ABS in 2015, said it has recovered more than £3m in benefits and compensation for clients during its history to date.

Axiom Law is set to list on the New York Stock Exchange. This has been reported as potentially the most significant move in the so-called 'New Law' market to date. Axiom, which is not a regulated law firm, has provided legal and consulting services to in-house teams in three ways: through 'on-demand' lawyers, an end-to-end outsourced service for complex legal processes, and project work. It employs 2,000 people around the world, including in London and Belfast, and had a 2017/18 global turnover of around £275m.

A 'robot mediator' has been used to settle a dispute in the court system, for what is believed to be the first time. The dispute concerned around £2,000 in unpaid fees claimed

by a trainer from a client following a personal counselling course. Using Smartsettle ONE, developed by a Canadian business, the software works by allowing parties to make offers and counter-offers by moving flags along sliders – a green one seen by the other side and a yellow flag which is not. Algorithms learn the bidding tactics and priorities of the parties employed and help ‘nudge’ them into a settlement, without revealing their secret bids.

Venture capitalist BGF has made a new multi-million-pound investment into two more law firms. The company, which describes itself as ‘the UK’s active investor in growing companies’, has injected cash into niche property firms Equilaw and Thomas Legal.

Third-party funder Therium has launched a £1m fund to provide not-for-profit litigation funding in order to facilitate access to justice. Former Lord Chancellor Lord Falconer is chairing the advisory committee that will assist the company in choosing where to put the money. Grants awarded by Therium Access are intended to assist those who lack the funds necessary to pursue or defend claims, as well as to projects that seek to improve access to justice.

Market intelligence and research

Analysis by Citizens Advice has shown the existence of a mental health premium.

Where poor mental health reduces someone’s ability to carry out daily activities, they can incur costs of £1,100 - £1,550 each year as a result of inaccessible services, poor regulatory protections and inadequate support. Citizens Advice has recommended that certain regulators should identify a set of minimum standards of support which all providers should offer for people with mental health problems and monitor performance in this area.

In the ninth edition of its annual market report, **IRN Research has found that consumer law firms are optimistic about the future.** Almost two-thirds of solicitors active in the main consumer law areas expected their workload to increase. However, it warned that the move to online services is likely to mean more consumers going it alone online, and that the SRA Handbook reforms could lead to downward pressures on fees, in particular as freelance solicitors benefit from lower overheads.

The latest data shows a peak in conveyancing transactions since the UK voted to leave the EU. Search Acumen’s analysis of Land Registry data shows that ‘challenger firms’ – those which handle between 100-200 transactions a month, enjoyed the largest year-on-year increase, processing 27% more transactions. However, the overall number of conveyancing firms is at its second lowest level since records began.

The latest edition of the LexisNexis Bellwether shows that **half of solicitors are worried about Brexit but less than one in ten has made any contingency plans for it.** Almost two-thirds said they were concerned about the SRA’s new rulebook, particularly on staff retention as good lawyers were increasingly attracted to virtual firms and in-house roles.

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	
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 [○]	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	£27.2bn	£29.3bn	£30.5bn	£32.3bn	£31.8bn	£32.6bn		
Number of active ABS	LAs	68	236	373	618	837	1,091	1,244	
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	£3.1bn	£3.4bn	£4.0bn	£4.3bn	£4.1bn			
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