

Horizon scanning report

(Covers the period 14 March to 11 April 2019)

The top five

The UK has slipped from 10th to 12th place in the World Justice Project's Rule of Law Index. Our analysis of the data shows that the UK's overall score has improved slightly over the last five years but other countries have improved more over the same period. The largest areas of slippage in our performance over this period are in the categories of people can access and afford civil justice, and the effectiveness of the criminal investigation system. Overall more countries declined than improved since last year, in part due to rising authoritarianism. The top three overall performers were Denmark, Norway and Finland.

The SDT is to move from the criminal to the civil standard of proof. The SRA welcomed the decision whilst the Law Society expressed regret. The SDT has urged the SRA to use powers already available to introduce a fitness to practise regime.

The Ministry of Justice has confirmed plans to go ahead with no fault divorce reforms. Under current rules, one spouse has to allege adultery or unreasonable behaviour by the other for divorce proceedings to start straight away. In future, they will only have to state that the marriage has broken down irretrievably. Changes will also stop one partner refusing a divorce if the other one wants one. The two-stage legal process of decree nisi and decree absolute will be retained with a minimum timeframe of six months petition stage to final divorce. Legislation will be introduced 'as soon as parliamentary time allows'.

Bob Neill MP, chair of the justice select committee, has called for a ban of paid McKenzie Friends after a disabled man, Paul Wright, won £260,000 from a McKenzie friend, George Ruzs, who ruined his medical negligence claim. This was to compensate Mr Wright for what he was likely to have received had he been properly advised. The High Court ruled that Mr Ruzs, who was also ordered to pay £73,000 in costs, should be held to the same standard as a qualified lawyer as on his website he held himself out to be "an experienced legal professional". The firm's headed notepaper also falsely implied that it was regulated by the SRA. In other words, the implication of the ruling is that if a McKenzie Friend chooses to persuade a client that they have the skills and abilities of a qualified solicitor or barrister, then that is the yardstick by which they shall be judged.

The SRA's residential conveyancing thematic review has raised concerns about how open solicitors are about costs and whether they are doing enough to make sure buyers understand any potential contractual obligations. One third of initial quotes did not include fees for additional work, such as bank transfers, that should have been anticipated at the outset. Firms were also not transparent about mark-ups they added to banks' telegraphic transfer fees – in some cases this was as much as 10 times the fee set by the bank. In a quarter of leasehold purchases solicitors did not explain the difference between freehold and leasehold models of ownership, relying on the client to get this information elsewhere.

Political developments affecting the justice sector

The Ministry of Justice has started its review of criminal legal aid fees. The ministry says it wants to reform the fee schemes so that they fairly reflect, and pay for, work done, support market sustainability, limit perverse incentives, and ensure proportionate administrative burdens on everyone. The review will be overseen by a cross-agency Criminal Legal Aid Review Programme Board, chaired by the ministry's director of access to justice, which in turn is being advised by a Defence Practitioner Advisory Panel.

The Housing, Communities and Local Government Select Committee has called for an **end to financial incentives for buyers to use developers' panel solicitors**, in a major report on the leasehold system. It felt that some conveyancing solicitors have become "too close to developers" and do not put their clients' interests first. The committee also called on the government to undertake a review within the next six months to determine whether existing routes to redress, including the Legal Ombudsman's scheme, were satisfactory or whether a new ADR scheme should be established for leaseholders to pursue negligence claims. There has been concern about solicitors failing to warn clients of onerous terms in leases.

Ireland's legal community has stepped up its campaign for Dublin to become the EU's dispute resolution forum of choice following Brexit with a high-profile visit to Washington DC. The Irish government is promoting the message that, following Brexit, Ireland will be the only common law jurisdiction in the EU other than Malta.

In the latest phase of the government's **Legal Services are GREAT** campaign, UK lawyers went on a three-day trade mission to Nigeria. The mission involved workshops, talks and seminars promoting collaboration and partnership working.

A report by the Business, Energy and Industrial Strategy select committee endorsed the CMA's proposed operational split between audit and non-audit but argued that going further with a **structural break-up of the Big Four** would prove more effective in tackling conflicts of interest and providing the professional scepticism needed to deliver high-quality audits. Commentators suggested that pressure on the Big Four on their audit work would increase their levels of investment in other areas of work, such as legal services.

Regulatory and wider policy developments

The Rt Hon Dame Victoria Sharp DBE will succeed Sir Brian Leveson as President of the Queen's Bench Division from 23 June 2019. She will be the first woman President of the Queen's Bench Division.

Lord Ajay Kakkar has been reappointed as Chair of the Judicial Appointments Commission for a second term of 3 years.

The BSB has published a new strategic plan for 2019-22 and its latest risk outlook. The organisation's main priorities will be to ensure that major reforms to training, disciplinary and enforcement processes, and market transparency, are successfully implemented and evaluated. The three strategic aims for 2019-22 are: delivering risk-based, targeted and effective regulation; encouraging an independent, strong, diverse and effective legal profession; and advancing access to justice in a changing market.

The SRA has announced that its new rulebook will come into force on 25 November 2019, some six months later than originally expected. It said the delay would give solicitors more time to prepare. Supporting guidance will be issued over the coming months.

The SRA has written to 400 firms asking them to demonstrate compliance with anti-money laundering regulations. There remains the suspicion that many firms have yet to get to grips with their responsibilities, and are an attractive and easy target for criminals and terrorists to process their dirty money. Over 60 cases have ended up before the SDT linked to potential improper money movements in the last five years. Separately, the National Crime Agency said lawyers have not been forthcoming in reporting suspected suspicious activity related to money laundering – the number of reports fell by 12% since last year.

The SRA has confirmed plans to remove exemptions afforded solely to EU lawyers when they apply to qualify in England and Wales if the UK leaves the EU without a deal. It said that World Trade Organisation (WTO) rules would not allow EU lawyers to receive preferential treatment. EU lawyers are currently able to apply for exemptions on a topic by topic basis from the Qualified Lawyers Transfer Scheme, which all foreign-qualified lawyers must sit to qualify in England and Wales.

The SRA has rejected a request from the SDT to investigate claims of dishonest conduct made against David Greene, deputy vice president of the Law Society. The case relates to dispute over about £7,000 in unpaid fees that Mr Greene says is owed to his firm, Edwin Coe, by a former client, David Davies. Mr Davies alleged that Mr Greene had misled the courts in his evidence in relation to his status as a client.

Richard Moorhead has criticised the Law Society for an absence of ethical leadership for its guidance note for solicitors on NDAs. Giving oral evidence to the women and equalities committee he said that the guidance “appears more concerned about asserting the legitimacy of using NDAs than it does about dealing effectively with the risks”. He also described the BSB’s decision not to publish guidance as “regrettable”. The BSB then wrote to the committee claiming that issuing guidance was “neither necessary nor appropriate”. It argued that instead it was Parliament’s job to tighten up the use of NDAs and the core duties in its code of conduct were able to deal with poor behaviour by barristers.

The SRA has referred the solicitor at Allen & Overy who drafted the NDA involving Harvey Weinstein to the SDT. Speaking to the women and equalities committee, Paul Philip said he believed law firms “are behaving differently” as regards NDAs, because of the heightened awareness, the work of the women and equalities committee, the warning notice issued by the SRA and the #MeToo campaign.

A group of 65 GCs spanning major companies from the UK and Europe has collectively signed a letter urging law firms to improve their diversity efforts.

Rosemary Martin of Vodafone (former LSB board member) said that the GCs will now be contacting their respective partner law firms to encourage conversations on diversity. The initiative mirrors the open letter signed by 170 GCs from US companies sent in January.

Clifford Chance has become the first major law firm to report sexuality and disability pay gaps for its UK arm, in addition to gender and ethnicity pay gap data. It reported a mean 35.6% pay gap for sexuality and a mean disability pay gap of 61.9% across all levels of the firm, including partners. The firm’s overall gender pay gap has risen to nearly 70%.

The Lord Chief Justice has claimed that the problem of male judges bullying female barristers in court has been exaggerated. Appearing before the Constitution Committee Lord Burnett said he was concerned about reports of sexism at the criminal Bar leading to

women leaving the profession, and the impact this would have on the judiciary. On other issues, he highlighted the Judicial Appointments Commission's failure to recruit enough lawyers of sufficient quality to fill vacancies on the High Court and circuit bench. He also criticised media reporting of the judiciary and lack of legal literacy among the public.

HM Land Registry has started to publish requisitions data to help consumers choose quality conveyancers. The agency makes 3,000 requests for information (requisitions) every day when customers omit or supply inaccurate information. The dataset shows the number of enquiries raised for its top 500 customers, by volume of applications lodged.

The Centre for Data Ethics and Innovation (CDEI) has started a project on the potential for bias in the use of algorithms in crime and justice. CDEI will partner with the Cabinet Office's Race Disparity Unit for the project. Algorithms may be used to assess the likelihood of re-offending and inform decisions about policing, probation and parole. The project is part of CDEI's first work programme and strategy, which also includes investigating how data is used to shape online experiences through personalisation and micro-targeting (e.g. where you search for a product and then adverts for similar products later appear).

The European Commission has published ethics guidelines for trustworthy AI. The guidelines have three components: it should be lawful, complying with all laws and regulations; it should be ethical; and it should be robust from a technical and social perspective, so it does not cause harm unintentionally. The EU's ambition is to boost spending on AI to €20bn (£17bn) annually over the next decade. The bloc is currently behind Asia and North America in private investment in AI.

The National Audit Office has published a report assessing how well key **regulators measure and report their performance in protecting the interests of consumers.** The report argued it is imperative for regulators to be clear and specific about the outcomes they are seeking to achieve and are transparent in reporting their performance. It concluded that the regulators examined in its review (Ofwat, Ofgem, Ofcom, FCA) have good insight into consumer concerns and issues. However, they are not sufficiently specific and targeted in setting out what overall outcomes they want to achieve for consumers, and therefore what information they need to evaluate and report on their overall performance robustly.

The FCA has announced that over 900 claims management companies (CMCs) have registered with them. This marks a continued fall in the number of CMCs. Previous data had shown a fall from 3,213 CMCs in 2011 to 1,238 in 2018.

Market developments

The Co-operative recorded a 37% rise in turnover from legal services in 2018, and a 53% jump in profit. The legal services business – which is part of the Co-op's life planning division – saw its income reach £34.9m in 2018, up from £25.5m the previous year. The results reflect the acquisition a year ago of Simplify Probate, which made the Co-op the largest probate provider in the UK.

EY has acquired Thomson Reuters' Pangea3 Legal Managed Services business. The deal will add 1200 staff to EY's existing legal managed services. Pangea3 claims as clients four of the 10 largest corporations in the world by market capitalisation, all of the top 10 multinational investment banks, and 47 of the biggest law firms in the US.

ICLR, the charity that publishes law reports for the higher courts, has launched a **research lab to leverage its archive of law reports in boosting legal innovation**. The venture hopes to produce both generic 'open source' tools to exploit other legal databases and ultimately a free service that will bring its data to non-technical users.

A new litigation funder is to use artificial intelligence to carry out a risk analysis of the small to medium-sized claims it intends to back. Apex Litigation Finance said it would use predictive analytics technology to identify cases with the right risk profile.

The Global Blockchain Business Council (GBBC), an industry association, has launched a working group to advise members on the legal and regulatory landscape. The aim of the group is to "provide the guidance and education that is crucial for the easy adoption of blockchain". Meanwhile, a worldwide trial involving law firms and banks found that blockchain reduced the time taken to transact properties from months to weeks.

The World Intellectual Property Organisation has launched an **AI-based image search tool that makes it faster and easier to establish the distinctiveness of a trademark**. Earlier generation search tools identify shapes and colours in marks, but the AI technology uses deep machine learning to identify combinations of concepts (e.g. an eagle, tree, star). Users can access the new AI technology search engine free of charge.

Market intelligence and research

Research led by Dame Hazel Genn and Sarah Beardon has concluded that **providing legal assistance services in healthcare settings can both improve access to advice and support health services to manage non-clinical demand**. It found almost 400 social welfare legal services exist across England and Wales in healthcare settings such as GP practices, but nearly half have funding for just a matter of months. Also, the network of healthcare-based advice centres had grown up organically over many years but there was now a "strong case" for integrating social welfare legal and health services more formally.

Insolvency Service figures reveal the number of insolvencies among solicitors' firms reached a new high last year. There were 39 law firm insolvencies in 2018, up 70% from the 23 in 2017. Meanwhile, a funder has warned that the practice of 'loan stacking' – the process of taking out multiple business loans from various lenders at the same time – will only make things worse. However, analysis of SRA data by accountancy firm Hazelwoods showed that of the 281 firms which closed over the last 12 month period, only 10% did so due to financial difficulties. The majority of closures resulted from mergers.

The Law Society's annual survey of small and medium-sized law firms has reported solid real-terms growth for the seventh year running. Median fee income rose by 4.2%, median profit per equity partner (PEP) rose by 1.4% and 60% reported higher PEP. However, participants predicted lower growth expectations for next year.

Research by the Junior Lawyers Division of the Law Society has revealed that **half of respondents had experienced mental ill-health in the last month and one in 15 had suicidal thoughts**. The figures mark a sharp rise since last year when 38% of junior lawyers reported mental ill health.

LSE researchers have found that **children of lawyers are 17 times more likely to become lawyers** than children whose parents did a different job. They argue this parental influence is part of the reason why working class people are under-represented in the professions.

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	<i>£20.01</i>
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