

Subject: President's Update 21.12.2020



Dear colleague,

Your weekly Law Society update

As the professional body for solicitors, every week the Law Society is working hard to influence the legal and regulatory environment on behalf of our profession and to promote solicitors at home and abroad. We support practice excellence, are an informed source of legal sector news and support members at every stage of their career.

Website

Our [new website](#) and the new [My LS](#) are now live. Please register to see content tailored to your practice and interests. Thanks to all members who have fed back during development. Feedback is still welcome. Registering with My LS will also help you understand the benefit to your constituents.

Find a Solicitor Service

Whilst the Law Society is not able to give legal advice, if you have a client who needs advice in a practice area other than your own, our Find a Solicitor service is available to help them find a legal professional who can help. They can use the service by visiting solicitors.lawsociety.org.uk or by calling [020 7320 5650](tel:02073205650).

We have been in the media this week to promote the role and value of the profession in these difficult times

The [Guardian](#) and [Business Telegraph](#) reported calls from business groups around the country for the government to negotiate a trade deal with the EU. They cited our warnings over preparedness.

The [Gazette](#) examined what leaving the EU without a deal will mean for the legal profession. Helena Raulus, head of our Brussels office, said: "There is no scenario under which UK qualifications [alone] will remain acceptable in the EU."

The CMA's review into legal services was covered by the [Gazette](#), [Legal Week](#) (£) and [Legal Futures](#).

I said: "The solicitor profession has made significant strides in providing more information for clients on their prices and services and we are pleased to see the CMA recognises this. Kite marks provide further useful indicators on solicitor expertise in specific areas of law."

"Given the pivotal role of the rule of law in the economy and the whole of society, any further reforms should not only focus on competition outcomes, but also on the public interest, the rule of law, access to justice, and an independent, strong, diverse and effective legal profession – all of which are regulatory objectives under the Legal Services Act."

[BBC Wales](#) reported on the case backlogs in the criminal justice system – with cases now being delayed until 2023 – and examined the effect waiting for trial has on victims, defendants and the criminal justice system. Scott Bowen, chair of our criminal law committee, said: "It's chaos, there are cases being moved left, right and centre."

[New Law Journal](#) also covered the backlogs – noting that as of the week ending 22 November, the magistrates courts had 479,489 outstanding cases and the Crown Court 53,318.

I said: "It is reassuring to see that the backlog in the magistrates' courts is falling but it is clear that the need for additional court capacity to enable jury trials to take place safely is ever increasing."

"We remain to be convinced that Covid operating hours have delivered any significant additional court capacity and continue to be concerned about the significant impact such extended hours have on court users, legal practitioners and how our justice system functions."

"We believe the additional resources it takes to run Covid operating hours should be used to open additional Nightingale Courts – which would increase court capacity and do much more to reduce the case backlogs."

Meanwhile, our response to the consultation on Covid operating hours featured in the [Gazette](#).

I said: "Although more cases have been disposed of during COVID operating hours, it appears to have been largely due to the fact that shorter, less complex cases are allocated for these times, which means

that a greater number of cases can be allocated, and therefore a greater number of those cases crack.

“It’s our view that the vast majority of the benefits observed in the pilots would equally have been delivered had the same mix of cases been allocated to courts operating normal court hours.”

Also in [New Law Journal](#) and [Legal Futures](#).

The [Gazette](#) covered Ministry of Justice proposals to pay criminal defence lawyers for work on early disclosure materials.

I said: “While the announcement of the fee for engaging with early disclosure is welcome, it is not the extra money that criminal defence solicitors are so desperately in need of.

“This fee is simply payment for extra work that solicitors will have to do under the attorney general’s new guidance on pre-charge engagement. The Ministry of Justice has been aware of the guidance for some time so we are disappointed the consultation is only being published now.”

Also in [Business Fast](#).

The [Evesham Journal](#), [Bournemouth Echo](#), [Doncaster Free Press](#), [Lancashire Evening Post](#) and several others reported on the delays in small claims courts. I said: “To reduce the backlogs in civil courts, we urge the government to increase court capacity by opening additional Nightingale courts and ensuring the judiciary are well-equipped and encouraged to conduct hearings remotely where needed.”

[New Law Journal](#), the [Australasian Lawyer](#), [Law Careers](#), [Eastern Eye](#) and [African Voice Online](#) all reported research commissioned by the Law Society to assess the progress that has been made toward a more inclusive profession.

“George Floyd’s death and the Black Lives Matter protests shone a light on the racial inequalities and injustices that persist around the world. The movement has undoubtedly increased the focus on these issues in the legal profession and provided a much-needed opportunity for reflection,” I said.

The [Gazette](#) also reported on the ethnicity pay gap between BAME and white solicitors.

The [Gazette](#) covered on Law Society concerns about SRA enforcement data which show black, Asian and ethnic minority lawyers feature disproportionately in the numbers of complaints received about solicitors, investigations taken up by the SRA and sanctions issued by the Solicitors Disciplinary Tribunal.

I said: “We welcome the SRA commissioning independent research into the matter. This research must be undertaken as a priority so that the SRA can better understand the issues which may be causing unfairness and focus on resolving them as soon as possible.

“The legal sector stands for access to justice, equality for all and the rule of law. We must ensure that within our profession, there is equality at all stages and solicitors’ chances of being complained about or investigated are not influenced by race or ethnicity.”

Also in [Solicitors Journal](#).

The [Gazette](#) reported on the SRA’s new guidance for qualifying work experience for the SQE. I said: “We will continue to work with the SRA to ensure the introduction of the SQE runs as smoothly as possible and does not create any unnecessary barriers for those looking to start a career in the law.”

The [Gazette](#) argued that the diverse membership of the panel examining the Human Rights Act (including my predecessor as president, Simon Davis), and the limited scope of the review indicate that conclusions will more likely seek to build consensus than dismember the Act.

The review will focus on just three areas: the relationship between the domestic courts and the European Court of Human Rights; the HRA’s impact on the relationship between the judiciary, executive and parliament; and the implications of the way in which the act applies outside the UK.

I noted that the rights enshrined in the HRA are core to the UK’s identity and said: “These core values will be front and centre for the panel, whose job will be to ensure that they are not rolled back or compromised.”

[Global Legal Post](#) covered the Supreme Court’s decision to allow a class action against Mastercard for 46 million British citizens.

I tweeted: "This is a momentous decision for enforcing consumer antitrust rights."

The [Telegraph](#) (£), [House Ladder](#) and [Today's Conveyancer](#) all reported that due to increased demand, people will struggle to meet the stamp duty holiday deadline if they're looking to buy and sell homes before the end of March. I said: "Consumers must recognise that it is increasingly unlikely that if they sell/buy their house now, that they will complete by the 31 March deadline."

Gary Rycroft, chair of our digital assets committee, was among the experts talking to [Grazia](#), about whether weddings will go ahead in 2021 and what will they look like.

"I think 'expect the unexpected' must remain the philosophy to live by for now. From a legal perspective that translates to making arrangements and signing contracts which have defined 'wiggle room' and 'exit strategies'," he said.

Bill Waddington, from our criminal law committee, was interviewed by the [Times](#) (£) in his capacity as the departing head of the Criminal Law Solicitors' Association.

"People are leaving [criminal legal aid] and young lawyers are not coming in," he said.

"Morale is at an all time low, and if you factor in Covid, we're in an absolutely desperate situation.

"The system is only running due to the continued hard work and goodwill of criminal lawyers, including the Bar and Crown Prosecution Service, who are devoted to providing an excellent service."

Meanwhile Richard Miller, our head of justice, discussed legal aid in the [Gazette](#).

"There is still a lot to be done to make the legal aid system fit for purpose," he said.

"It remains a pale shadow of the system that existed when I became director of the Legal Aid Practitioners Group in 2000. But for the first time in two decades, it feels like the public debate is about how to improve legal aid, instead of how to stop further cuts."

The [British Psychological Society](#) covered data from the CPS on rape prosecutions and the impact of a failure to prosecute on victims and survivors, noting that the Law Society's Criminal Law Committee have argued that the CPS has become more reluctant to allow cases to proceed without the strongest evidence.

Parliamentary

President's speeches

On Monday I attended the inaugural address of the Chair of the Bar Council, Derek Sweeting QC.

On Tuesday the Vice President and I attended a roundtable of profession leaders to discuss practical steps in making real change for black professionals and those aspiring to join the profession in our ongoing campaign "Achieving Change Together". This RT followed the publication of our study report "Race for Inclusion" detailed above.

On Thursday:

- I spoke at the valedictory ceremony of outgoing Master of the Rolls, Sir Terence Etherton, alongside the lord chief justice and a representative of the Bar. In a moving speech Sir Terence described the discrimination he had suffered as an openly gay applicant for the judiciary but the strides that had been made since in seeking to create a diverse judiciary. I thanked Sir Terence for his work in reforms of civil justice, with a focus on those encountering the justice system, and for his work with the profession.
- I also spoke at the UIA Open Forum for Bar Leaders along with the Chair of the Board discussing public legal education.

Private International Law Bill receives royal assent

The Private International Law (Implementation of Agreements) Bill [received royal assent](#) and entered the statute book on Monday 14 January. It was first tabled in the House of Lords in February 2020,

During its passage through Parliament, the Law Society achieved a government commitment to implement the Hague Convention 2000 in England and Wales, and Northern Ireland, after appropriate consultation. This came about after we co-operated with Lord Wallace of Tankerness and other

interested parties on an amendment which was backed by Labour and the Liberal Democrats. The Law Society was also mentioned by spokespeople within Labour and the Liberal Democrats, as well as the Justice Select Committee chair – often regarding the importance of the Lugano convention.

Internal Market Bill receives royal assent

The UK Internal Market Bill received Royal Assent on Thursday 17 December after the Lords agreed to the latest round of Commons amendments on Wednesday 16 December.

The Bill, which was the cause of much contention as it contained powers allowing ministers to breach international law (and because of its perceived encroachment on devolved governments), was subject to a swift journey through Parliament.

As of last week, the elements of the Bill which jeopardised the international rule of law have been removed, due to a decision by the UK-EU Joint Committee addressing outstanding issues relevant to the implementation of the Withdrawal Agreement. The Law Society has campaigned against the now-removed clauses since the Bill was first published, and our member action during Commons committee stage saw almost 5000 solicitors and members of the public write to their MP conveying our concerns. These concerns were also raised in the Commons by spokespeople for the Labour Party, the Liberal Democrats, the SNP, and by former prime minister Theresa May.

CMA Report Published

The Competition and Markets Authority published a [report](#) on their review of the legal services market study in England and Wales, assessing the implementation and impact of the 2016 recommendations.

The report acknowledges solicitors have worked hard to implement the rules, and indicates that regulators should look to build on what is already in place rather than mandating new requirements. I said “We have had very constructive engagement with the CMA during this review, they have clearly listened to us and recognise the progress made by law firms.” Our press release can be found [here](#).

Justice

[Consultation opens on legal aid fees for engagement with early disclosure](#)

The Ministry of Justice is consulting until 25 January 2021 on proposals for legal aid fees to be paid for engagement with the prosecution on early disclosure. This follows the [Attorney General's guidelines](#), which are due to come into force on 31 December.

Read our press comment on twitter here: [link](#)

[> Read more about the consultation](#)

[Law Society responds to COVID Operating Hours consultation](#)

We have responded to the Ministry of Justice's (MoJ) proposals to roll out the COVID operating Hours (COH) pilot. We remain to be convinced that COH have delivered any significant additional capacity and we've suggested other approaches might better meet the objective of clearing the backlog:

- Make proper and full use of existing judges and courts, added to by part time judges and court space.
- Before looking at COH, the MoJ must ensure it is making maximum use of normal court hours, with no restrictions on judges sitting while there are court rooms (real, virtual or Nightingale) available where they could be working.
- Using unused public buildings – including buildings which have been closed but remain unsold – as Nightingale courts.

In our response, we also raise concerns around:

- The potential for discrimination to members with caring responsibilities
- Travel issues
- Insufficient data to support a further rollout of COH
- The inadequacy of the consultation timeframe
- Lack of transparency around the duration of the proposals

[> Read our response](#)

[> Read our press release](#)

[> Read the COH proposals \(PDF 617 KB\)](#)

Probate user group meeting

We hosted our monthly probate service user group meeting with HMCTS and other key stakeholders. Our discussion focused on the extension of the grace period for the use of paper-based probate applications until Monday 11 January 2021 as well as the current issues with the service and how HMCTS are addressing these.

[> Read our summary](#)

Regulation

2020 NRA of Money Laundering and Terrorist Financing

After many months of anticipation the **2020 National Risk Assessment (NRA) of money laundering and terrorist financing** was published yesterday by HM Treasury and the Home Office. This is the 3rd NRA following 2015 and 2017 publications. Whilst containing nothing unexpected around the risk and threats, there is a significant and positive change from the previously general negative narrative and rhetoric from the 2015 and 2017 NRA, and labelling of the legal profession, notably solicitors, as “professional enablers”.

For the legal profession the risk scores remain unchanged with money laundering remaining 'high' and for terrorist financing categorised as 'low'. Legal service providers offer a wide range of services, of which the most at risk of exploitation by criminals and corrupt elites for money laundering purposes continue to be around conveyancing, trust and company services and client accounts (shame litigations and fraudulent investments schemes being highlighted).

Whilst there have been significant improvements in the capacity and capability of the legal sector supervisors, with changes to the Money Laundering Regulations boosting capability to tackle non-compliance, the main non-compliance trends by legal service providers highlighted are: failure to apply customer due diligence to all clients involved in further transactions; and a failure to conduct 'ongoing monitoring of a business relationship' by scrutinising transactions and source of funds in compliance with the regulations. This increases the risk of legal services being exploited by criminals as there are insufficient controls in place.

The low level of Suspicious Activity Reporting (SARs) from the legal sector is also subject of continued comment, however it acknowledges the work by the sector and supervisors in engaging with UKFIU to improve quality and reporting levels.

Diversity & Inclusion

Easy wins and action points for disability inclusion

In this resource for large organisations within the legal sector, we share recommendations on how to improve disability inclusion in your workplace.

It includes a number of questions to keep in mind when designing policies, practical tips on starting initiatives to better support disabled staff and details a number of easy considerations and adjustments you can make for a more disability inclusive future.

Download the resource:

<https://www.lawsociety.org.uk/topics/lawyers-with-disabilities/easy-wins-and-action-points-for-disability-inclusion>

Senior leaders must lead the way for disability inclusion

As part of our ongoing Disability History Month content, we've worked with Legally Disabled to produce tips for senior leaders for creating more disability inclusive working environments. [Read the tips](#)

Mark Blois, member of our Lawyers with Disabilities Division and partner at Browne Jacobson, joins us for an interview about his journey as a disabled senior leader and shares advice for fellow leaders in the profession. [Read the interview](#)

Improve race inclusion in your organisation

To complement the launch of our research into the career experiences of Black, Asian and Minority Ethnic solicitors, we have produced an inclusion toolkit offering practical steps to improve the culture in your organisation.

In conjunction, we have also produced a terminology guide exploring the various terms used in conversations on race and ethnicity.

[Read the toolkit](#)

[Read the terminology guide](#)

Update from our Brussels office

On 15 December, Helena Raulus spoke on Brexit and civil judicial cooperation with Hugh Mercer for the ALPS.

On 16 December, Helena Raulus, head of office spoke on Brexit for the Law Society of Scotland, webinar organised by Shepherd and Weddeburn.

On 17 December, Rita Giannini, EU policy adviser spoke at the annual Conference “Carlo Cafiero” organised by the Naples Bar and the main theme was 'Brexit - and now?' Consequences for British and non-British lawyers.

Our work internationally

Establishing in the UAE

On Tuesday 15 December the Law Society and the Ministry of Justice co-hosted a webinar to assist SME firms and to understand how to grow their market share in the UAE. The UK exported over £126 million in legal services to the UAE in 2018 (ONS data), making it our 11th largest global legal services export market. There are over 40 UK law firms based in the UAE with an estimated 900+ English & Welsh, and 70+ Scottish solicitors.

This webinar had over 40 people attend and provided an opportunity for small and medium-sized law firms wishing to gain a commercial presence to gain a better understanding from experienced lawyers who have an established presence in the UAE, as well as key government officials who are based there.

Economic Development Forum Legal Services Working Group meeting

On 08 December the first Legal Services Working Group meeting organised jointly by the UK Department of International Trade and Nigerian Ministry of Industry Trade and Investment was held and co-chaired by Helen Grant MP. It was set up following the Fourth Economic Development Forum between Nigeria and the UK and the group will meet over the coming months to discuss collaboration between the Nigerian and UK legal services. I, along with policy adviser Alexandra Squires-McCarthy, attended on behalf of the Law Society as well as four of our members. The president of the Nigerian Bar Association also attended as well as four members of the Nigerian bar Association.

Kind regards,

David Greene
President

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