



Classification: Public
Purpose: For noting

REPORT OF THE CHIEF EXECUTIVE OF THE LAW SOCIETY – PART 1

The issues

This edition covers the period 25 October – 22 November 2017 and provides:

- Key part 1 updates

Remit

The Interim Chief Executive is responsible for the delivery of the Law Society's strategy.

Statement of territorial application

This paper applies to England and Wales.

Our vision

We want to be valued and trusted as a vital partner to represent, promote and support solicitors while upholding the rule of the law, legal independence, ethical values, and the principle of justice for all.

Financial, section 51 and resourcing implications

There are no financial implications.

Consultation with Finance

This report has not been sent to Finance to review.

Equality and Diversity implications

Equality and diversity issues, where appropriate, have been highlighted in the relevant Directorate reports.

This report has been prepared for Council.

Interim CEO: Paul Tennant
Author: Paul Tennant
Date of report: 22 November 2017

Executive Summary

My focus and the Executive Team is to progress;

- a) The direction and future of TLS including the operating environment, the governance position, regulation and long term business planning
- b) The evolution of TLS looking at business change programmes, the leadership and management of the organisation and infrastructure
- c) The performance of TLS looking at the current business plan, priorities, structure, reporting framework, products and the operating framework

This report provides an update on issues impacting on the Law Society and our members, along with our responses. A full update of progress against the key business plan priorities since November 2016 can be found in the part 2 report.

The report includes:

- A summary of current key part 1 issues;

CEO Key activities

1. Mutual market access for legal services

Following our recent work on mutual market access, on 14 November the Secretary of State for Exiting the EU, Rt Hon David Davis MP, expressed support to our calls and stated: *“our transparent and strong legal system encourages companies to do business and invest with confidence”* and added that *“a lawyer visiting a client in Paris”* will continue to be of interest to both sides.

We are still awaiting a Government paper on trade in services and a statement on mutual market access for lawyers in the new economic relationship. Dates for publication have not been confirmed.

2. Lobbying on the EU Withdrawal Bill and engagement

The committee stage of the EU (Withdrawal) Bill is ongoing. The Law Society briefed MPs on second reading and committee stage on our key areas of concerns. These are:

- The impact of the Bill on citizens’ rights, most notably through the removal of the EU Fundamental Charter of Rights for EU derived law
- The scope and scrutiny of the delegated powers
- The impact of the act on devolution
- The compatibility of the Act with transitional arrangements

During the second reading of the Bill, the Law Society was mentioned by the Liberal Democrat Spokesperson on Brexit, Tom Brake MP. The Shadow Exiting the EU team also circulated the briefing to Labour MPs. The Law Society was also mentioned in day one of Committee Stage of the Bill by Labour MP, Seema Malhotra. She raised our concerns about the uncertainty caused by clause 6 of the Bill on the interpretation of EU retained law and the CJEU jurisdiction. We are working closely with the Bar Council on this clause.

The Wales Office and Westminster Public Affairs team also attended a National Assembly of Wales policy event on the EU (Withdrawal) Bill. We also briefed the committee clerk of the External Affairs and Additional Legislation Committee in the National Assembly of Wales.

The Law Society has submitted written submissions to the following parliamentary committees:

- Lords EU Committee on 'Brexit: deal or no deal'
- Human rights implications of the EU(Withdrawal) Bill

During October to December we met with the following stakeholders to discuss our priorities for Brexit:

- Lord Bowness
- Gavin Newlands MP – member of the Justice Select Committee
- Nick Thomas Symonds MP – shadow Home Office minister
- Ellie Reeves MP
- DExEU Bill Manager of the EU Withdrawal Bill
- Paul Double from the City of London Corporation

3. European engagement

The CCBE has been discussing the future free movement of lawyers.

The Office Holders have held meetings with European Bars through a number of international events including:

- The President attended the American Bar Association Conference and Canadian Bar Association Conference. Bilateral meetings were held with the French and German Bars
- The Deputy Vice President attended the French National Bar Conference
- We had a number of bilateral meetings with European parts through the Opening of the Legal Year and held a roundtable on international trade.
- A number of European bilateral meetings took place at the International Bar Association which the President attended.

The Brussels Office hosted an event on dispute resolution in Brussels on 8 November. We also hosted a Conference with representatives from the Hague Convention on 21 November in London.

4. Law Society input into government groups on Brexit

As well as our regular meetings with officials the Law Society has been playing a key role in a number of Government industry/sector groups:

- **Brexit Law Committee** – Set up by the former Lord Chancellor and Lord Chief Justice to bring together a group of senior practitioners to identify and provide solutions for legal issues on Brexit. The Law Society provides the secretariat, and the chair is Robert Elliott, former Senior Partner at Linklaters. The Group has submitted papers to the Government on the dispute resolution mechanisms and how to retain civil justice co-operation. They are drafting a paper on competition law, intellectual property and immigration law for civil servants. The Lord Chancellor attended the meeting in September.
- **Professional Business Services Council's (PBSC) Mutual Market Access Group** – The Law Society is a member of the Council and has been working closely with the group's chair of Freshfields Bruckhaus Deringer to deliver a paper on market access for professional and business services post-Brexit. The Law Society is supporting the dissemination of the paper in Parliament and is organising an event.

5. Further engagement through the Brussels office

In October, the Brussels Office organised a series of meetings with MEPs (Sajjad Karim, Conservatives and Molly Scott-Cato, Greens), law firms (Dechert, Slaughter and May and K&L Gates) and CBI when Clive Black visited Brussels. The main issues to take away were:

- Law firms have prepared Brexit strategies. Banking and investment are already implementing theirs, but other businesses are not acting yet. Law firms think that the other businesses are going to start making their plans in early 2018.
- The European Parliament is not following the parliamentary discussions on the Withdrawal Bill, but it is following what the UK Government and the different ministers are saying about Brexit.

We also moderated the Open Europe event '*Which path for Britain after Brexit? The Swiss, Norwegian and Canadian alternatives*'. Speakers included David Campbell Bannerman (Conservative MEP), Hannes Boner (VP General Counsel, Sappi Europe), Paal Frisvold (Consultant, Norwegian industry federation and civil society), Henry Newman (Director, Open Europe). We also spoke at a British Chamber of Commerce event on the UK Transitional Agreement – A dose of reality. There were 23 participants, which included Andreas Witdouch, adviser to the Flemish Prime Minister.

We also held a series of international activities:

- Deputy Vice-President Simon Davis hosted a roundtable discussion on "Regulating the legal profession: Essential protection for clients or improper infringement on choice?" followed by a formal dinner to honour the bar leaders and guests from the CIS region attending the Opening of the Legal Year ceremonies, to strengthen our relationships with the bar leaders and representatives from the region, and explore areas of future collaboration.
- We signed an MOU with the Law Society of Hong Kong to establish a formal channel to raise practice rights issues for members and to recognise our good relationship.
- We also organised a seminar on Doing legal business in Iran, with the Iranian Bar Association, and the LexMex conference, on doing legal business in Mexico.

6. International

We participated to the IBA annual conference in Sydney, Australia, where we attended a roundtable with law firms organised by Lord Keen and spoke on the following panels:

- "Best practice in communication and empowerment of local social leaders through pro bono" (Joe Egan);
- "Is there any such thing as unauthorised practice of law in Global Legal Market?" (Bob Heslett);
- "Why and how to enhance the ratio of female talent in law firms?" (Stephen Denyer)
- "LGBTI criminals: the British legacy" (Robert Khan);
- "Legal aid and best practice: guidance for all jurisdictions" (Lucy Scott-Moncrieff);
- "Fear of flying in Asia: a review of the FiFo environment in Asia and a global update - should 'local lawyers' be afraid of temporary 'foreign lawyers'?" (Mickael Laurans);
- The balance between migration, international security, rule of law and terrorism: what bar associations can do to facilitate this conversation" (Robert Khan);
- "Project Management of legal transactions" (Stephen Denyer).

We also hosted a reception which was attended by more than 400 guests from over 100 jurisdictions.

We attended the Union Internationale des Avocats (UIA) annual congress in Toronto. Law Society President Joe Egan spoke at the International Bar Leaders' Senate on 'What disciplinary rules should apply to lawyers exercising under mobility rules?'. He also spoke at a panel discussion organised by the UIA's EU Law Commission to give an "Update on Brexit". In addition, we held a bilateral meeting with the French National Bar Association and attended a meeting with the UK committee to the UIA.

We started the Commonwealth professional fellowship programme. Through this programme we are hosting four law societies officials from the Law Society of Kenya, the Uganda Law Society, the Rwanda Bar Association and the Pan-African Lawyers Union for a month. They will receive a full programme on the work of the Law Society with a focus on access to justice, the rule of law and human rights work.

We attended the Fédération des Barreaux d'Europe (FBE) annual conference. The President spoke to participants at the welcome reception on 9 November to congratulate the FBE to its 25th anniversary. We also attended the Ukrainian National Bar Association conference in Kyiv and hosted English Law Week in Moscow and St Petersburg.

On 23rd November, we will host a seminar with the UN Special Rapporteur on the Independence of Judges and Lawyers, Diego Garcia-Sayan. As part of this work, we are organising a seminar and supporting an event in Parliament.

On 29th November, we will host the second roundtable on women and the law, championed and chaired by the Vice President Christina Blacklaws. During this roundtable, the strategy for the international programme on women and the law will be presented and agreed upon with members of the legal profession in England and Wales.

7. Law Society AML and Financial Crime Conference– 22 November 2017

We are expecting around 400 delegates at this year's conference. The programme includes the Security Minister Ben Wallace MP as the keynote speaker along with contributors from the National Crime Agency, HMRC and the Office of Financial Sanctions Implementation.

8. Privilege - penalties for enablers of tax avoidance

The government has re-introduced in the new Finance Bill proposals for penalties for enablers of tax avoidance. We have made submissions to HMRC seeking clarity on certain points, particularly in relation to the 'knowledge condition' for advisers, and have met officials to discuss the practical application of legal professional privilege when making a declaration in response to an allegation of 'enabling'.

9. Privilege - HMRC Notices requiring Beneficial Ownership information

Council members may recall that in February 2017 HMRC served notices to a small number of law firms requesting client information in relation to beneficial ownership of or interest in offshore companies and trusts. We have kept in close communication with those firms that contacted us, and are considering how best to support a firm which has submitted an appeal to the Tribunal.

10. VAT and property searches

Following the decision in the HMRC v Brabners case, published on 5 September, there has been a good deal of concern about the effects of this decision on the application of VAT to searches. We are in the process of revising our practice note with the help of tax counsel to advise members on the implications of the judgment.

11. Civil Legal Aid Tenders

The Legal Aid Agency has launched the tenders for civil legal aid contracts and Housing Possession Court Duty Scheme contracts from September 2018. The Head of Justice is undertaking roadshows around the country to help members understand the process.

12. Joint note on Property Registration Fraud

We published our new advice note, prepared jointly with HM Land Registry, on property registration fraud. The new advice note focuses on the risks around property and registration fraud, and supplements a range of existing resources, training, practice notes and updates provided by both organisations to combat fraud and scams.

13. HMCTS

Following extensive lobbying by the Law Society and others, HMCTS announced that the Flexible Operating Hours pilot is to be deferred until February 2018 to allow for further engagement with Court users and to carry out another tender process to secure an appropriate independent evaluator. The tender process for the evaluation which took place over summer failed to deliver a satisfactory outcome. We are continuing to engage with HMCTS in respect of various research requests and to provide feedback on the 'as is' situation for many practice areas as well as IT prototypes. We are also engaging with a working group exploring the implications for open justice of the move to video and online processes.

At the Conservative Party Conference, Sajid Javid announced a consultation with the judiciary on a possible Housing Court. He said, "We will explore whether a new housing court could improve existing court processes, reduce dependence on legal representation and encourage arbitration, with benefits for both tenants and landlords. We will consult with the judiciary on whether the introduction of a new housing court can meet the aim of saving time and money in dealing with disputes." We are seeking more information about this proposal.

14. Professional Indemnity Insurance (PII) Guides

As almost all participating insurers require solicitors to approach them via brokers, to supplement our existing guides the Society produced a new list of all the major brokers of PII, which includes their contact details and information about the market segments in which they operate. <http://www.lawsociety.org.uk/support-services/risk-compliance/pii/guides/>

15. Pro Bono Terrorism Panel

The pro bono panel was successfully launched in June, as a helpline and panel of solicitors' firms willing to give pro bono advice to victims of the London terrorist incidents. The helpline was due to close on the same day as the terror incident in London's Parsons Green, and so the helpline was kept open for an additional two weeks. We have established an infrastructure with LawWorks to ensure a system that works smoothly now and into the future for those accessing and offering advice through the panel. We

have also put protocols in place to ensure a consistent, high quality of relevant pro bono legal advice is given to all who use the panel.

It is currently a referral program whereby Victim Support can refer victims to the helpline. Due to lack of uptake of the scheme, the coordinating group are discussing the possibility of opening up the referral process in the event of further attacks. They are also considering whether to expand the scope to include incidents which are not terrorism related.

16. Marketing update

Our plans for next year include developing a marketing strategy for the Law Society and our new Member Offer. Historically we have tried to sell individual products to members piecemeal. The new offers will require a fresh approach with a focus on increasing member engagement. Our investment in delivering digitally will support this. Early work has begun on this project.

As we finalise the five year corporate plan and member offer, work has been underway to look at how we present ourselves. This is timely as we prepare for the creation of a new website as part of our agreed investment in our plans to deliver digitally. An audit of our published materials has flagged issues with our visual identity and inconsistency in our written style.

Members of Membership Board, Management Board and staff have been involved in workshops to help refine proposals to refresh our visual identity. The revised approach will tackle the accessibility issues created by our current black on green identity and simplify the crest to work more effectively digitally.

A new simplified written style guide is also being developed to replace a number of internal written style guides.