



**Classification:** Public  
**Purpose:** For noting

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

### The issues

This edition covers the period 11 March 2016 – 4 May 2016 and provides:

- A summary of current key part 1 issues;
- Appendix 1 Key activities being undertaken by External Affairs;
- Appendix 2 Key activities being undertaken by Membership services ;
- Appendix 3 Consultation responses ;
- Appendix 4 Litigation update; and
- Appendix 5 Media coverage and recent press articles.

### Remit

The 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.

**CEO:** Catherine Dixon  
**Author:** Catherine Dixon  
**Date of report:** 4 May 2016

## **Executive Summary**

I set out below an executive summary of key issues facing the Law Society at the time of writing.

This report includes the following Appendices:

- A summary of current key part 1 issues;
- Appendix 1 Key activities being undertaken by External Affairs;
- Appendix 2 Key activities being undertaken by Membership services ;
- Appendix 3 Consultation responses ;
- Appendix 4 Litigation update; and
- Appendix 5 Media coverage and recent press articles.

## **CEO Key activities**

### **1. Separation**

The consultation on separating legal regulators from the professional bodies was expected to be issued before Easter. However it was not and it is unclear as to when it will be issued. We are currently in a period of purdah so it is highly unlikely that the consultation will be issued before the Brexit referendum.

The regulatory brief has transferred from Shailesh Vara to Lord Faulks QC, Minister for Civil Justice. We are due to meet with Lord Faulks on 12 May. The engagement programme with other key stakeholders and members continues.

### **2. Competition & Markets Authority Study on the supply of Legal Services in England and Wales**

Following submission of our response to the CMA, the Society was asked a number of supplementary questions. A response to these questions was submitted on 27 April. Thank you to those members of Council and committees who contributed to our response.

The Society will be engaging with the CMA throughout the life of the study. Currently, we are:

- At the CMA's request, setting up meetings between the CMA and various committees in the practice areas relevant to its market study.
- At the CMA's request, helping the CMA to identify law firms that it could contact in order to engage with legal services providers.
- Meeting with the CMA specifically in relation to their survey activities
- Meeting with the CMA at the end of May, at which stage the CMA's evidence-gathering phase will be complete.

The CMA will publish an interim report in July and a final report in December.

### **3. FCA Announcement - Clarifying our supervisory intentions: overall responsibility for the legal function under the Senior Managers Regime**

The FCA announced last year that it would be clarifying whether individual managers working in a bank, building society, credit union or financial institution will fall under the FCA's Senior Managers Regime which comes into force in March 2016. In January, the FCA issued a supervisory statement indicating that it will issue a consultation seeking views on the pros and cons of capturing individuals with overall responsibility for the legal function within the regime.

The profession is concerned about the potential consequential effects on :

- (i) the need for companies to register their General Counsel under the Senior Managers Regime;
- (ii) potential threat to legal professional privilege; and,
- (iii) potential loss of independence leading to conflicts of interest. It has been suggested that this is a further unwelcome and unnecessary level of dual regulation. The Society is engaging with various relevant stakeholders, including the FCA, to prepare for responding to imminent consultation.

There has been an informal meeting with FCA officials, at which the FCA indicated that

- It not looking to either encroach on the regulatory arrangements of other regulators (such as the SRA) or create a situation where 'dual regulation' applies.
- Its proposals are not aimed directly at the provision of legal advice but instead at the person who is responsible for that management function within the business.
- There are inbuilt safeguards within Financial Services and Markets Act 2000 to protect legal professional privilege.

Following this meeting, we are asking the FCA to confirm in writing that we have correctly understood everything which was covered in the meeting.

We remain concerned about the FCA proposals, because of the pressure in-house counsel may face to provide information which may only be achieved by waiving legal professional privilege.

There are currently no details as to when the FCA consultation will be issued.

#### **4. Panama Papers**

In light of recent revelations regarding the 'Panama Papers' two meetings of relevant internal stakeholders have been held. In these meetings discussions have been held on the main issues raised by the leak, namely: Tax Evasion, Offshore vehicles including trusts, Anti-Money Laundering and Tax Avoidance/Planning. The Government has brought forward proposals for new controls, which will affect members, and we will be engaging with the consultations.

On 11 May, we will be attending a conference, organised by the Commonwealth Secretariat in partnership with Transparency International and others. We have also contributed to an Anti-Corruption Summit to be hosted by the Prime Minister. To inform the debate prior to the summit, we have shown leadership by gathering the professional bodies together to make a joint statement re-affirming our commitment to fighting corruption and money laundering. The statement has been agreed with the Institute of Chartered Accountants in England and Wales (ICAEW) and the Society of Trust and Estate Practitioners (STEP) and the intention is to have numerous other professional bodies signed-up and the statement published on 11 May.

#### **5. Socrates Training Limited**

The Society's Conveyancing Quality Scheme requires the Law Society's AML training to be undertaken as part of the accreditation of first-time applicants and relevant new staff joining an accredited firm. Socrates provides AML training and alleges that the Society is abusing a dominant position by excluding other suppliers from providing this training for the purpose of CQS accreditation. The claim is for an injunction and a declaration that the requirement for CQS firms to buy training from the Society is illegal and unenforceable, and for damages due to loss of opportunity. The Society is defending the claim.

## **6. AIG Europe v OC320301 LLP & Others**

On 14 April the Court of Appeal gave judgment in an expedited appeal concerning the interpretation of the aggregation clause contained in the Law Society Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered European Lawyers in England and Wales (the “MTC”). The case was heard on March 23.

The interpretation of MTC 2.5(iv) was dealt with as a discrete issue prior to the factual determination of the case. The underlying claim is for losses suffered by investors in two schemes run by the same property developer and managed through the same law firm and its escrow account. The Commercial Court had denied AIG’s attempt to get a declaration that all 214 claims should be treated as one aggregated claim, thus subject to the insurance limit of £3m. That Court found that all 214 claims were separate matters.

After an appeal by AIG and further submissions by the trustees of the escrow account and the SRA, the Court of Appeal decided that the Commercial Court had gone too far in requiring “dependency” between matters in order to justify aggregation. After discussing the historic background to the creation of MTC 2.5(iv), the Court of Appeal remitted the case back to the Commercial Court with guidance on the approach to be taken to aggregation.

## **7. Criminal Legal Aid**

We continue to work closely with the Bar, the MoJ and LAA to update the criminal crown court fee schemes for litigators and advocates. The existing schemes are no longer fit for purpose as increasing amounts of electronic evidence have become a routine feature of many crown court cases.

Working groups have been set up within the Society comprising members of the Criminal Law and Access to Justice Committees and LAPB, and two Law Society papers setting out an alternative approach to each of the fee schemes have now been submitted to the over-arching Working Group comprising the MoJ, LAA and Bar Council. The MoJ has begun a data collection exercise in order to test the Law Society and Bar Council’s proposals for the Advocate Graduated Fee Scheme (AGFS).

The Society has been involved in discussions with the LAA and MoJ over the structure of the new crime contracts which need to start in January 2017 when the current interim contracts expire. Discussions so far have largely focused on the arrangements for duty scheme slot allocation, which has proved a contentious issue due to the varying interests of our members. We have tried to support a position that will present the fewest concerns for the majority of our members. Despite repeated requests, we have not yet seen the draft contract, on which the LAA will need to consult with the Society for at least 3 weeks.

We will be holding a series of roadshows for criminal practitioners to help them understand the Legal Aid Agency’s revised approach to criminal tendering and the allocation of duty solicitor work. These are subject to the MoJ’s final timetable, which has yet to be confirmed.

## **8. Advice deserts and civil legal aid pay rates**

Recent data issued by the LAA showing the number of legal aid providers in each procurement area indicate significant declines particularly in relation to housing law. There are no providers in Suffolk and Shropshire, and the last housing provider in Hull has just pulled out. Many large areas such as Cornwall, Somerset and Northumberland, as well as urban centres such as Dudley, Sandwell and Wolverhampton, have only one provider each. There was also the recent announcement by the Co-op that they are withdrawing from family legal aid.

We believe these developments may be indicative of a growing crisis of sustainability for legal aid. Overall there has been no significant increase in civil legal aid rates since 1996 and rates were cut by 10% in 2013. We have written to the minister requesting an urgent review of remuneration rates.

### **9. Civil legal aid residence test**

The Public Law Project (PLP) were granted leave to appeal to the Supreme Court against the Court of Appeal decision that the civil legal aid residence test was lawful. The Law Society was granted permission to intervene in the appeal.

The appeal was listed for two days on 18 and 19 April but in an unprecedented move, the Supreme Court stopped the case at the end of the first day of argument, and unanimously ruled the test as unlawful on the grounds that it is ultra vires as there was no power under LASPO to introduce it. The second major ground for appeal, that the test amounted to unlawful discrimination, was not considered by the Supreme Court.

If the Government insist on introducing the residence test, they would need to implement it by way of primary legislation. As yet there has been no announcement from the MoJ about their intentions.

### **10. Civil Courts Structure**

I met with Lord Justice Briggs to discuss his interim report, in particular the proposal for an online court on 12 April. During the meeting he welcomed the Society's constructive engagement with his proposals and stressed that he is not intending to exclude lawyers from the online court. LJ Briggs wants to make it more easily usable by those who do not have lawyers and emphasised that he sees lawyers as having a key role in developing the proposals, alongside technical experts and those who work with litigants in person. LJ Briggs acknowledged the importance of early legal advice, and accepted that there is a potential argument in favour of having some element of recoverable costs, possibly even for cases under £10,000. We are facilitating a meeting for Lord Justice Briggs in the Common Room on 9 June to get feedback from members about his proposals.

### **11. EU referendum**

A number of debates and events have taken place or are taking place over the next few months to ensure that our members are given opportunities to engage with the issues, and are informed of the implications of a 'remain' or 'leave' vote for the legal sector.

The Law Society and Bar Council co hosted an APPG on Legal and Constitutional Affairs EU Debate at the House of Commons on 20 April. The event was attended by Alberto Costa MP, Jonathan Djanogly MP, Baroness Ludford, Lord Clement-Jones and Lord Dykes.

A panel discussion took place at Chancery Lane on 28 April. Speakers included Keir Starmer QC MP, Chris Bryant, partner, Berwin Leighton Paisner LLP, Clive Thorne, partner, Wedlake Bell LLP and Martin Howe QC, chair, Lawyers for Britain. The discussion was very well attended, with highly positive feedback from the participants.

A further event is due to take place in Birmingham, in collaboration with the Birmingham Law Society. We also plan to host a public debate on the topic later in the year.

### **12. Possible introduction of fixed fees for low value clinical negligence cases**

The Government's long-delayed consultation has still not been published and it is now possible that it may not appear until after the EU Referendum, ie in late June. It is expected that the Government will continue to propose the introduction of fixed costs for what they will describe as low value, non-

Item 10 CEO Report to Council May 2016

© 2016 The Law Society

complex cases. It is likely that their view of what constitutes a low value will be considerably higher than ours, and it is possible that their proposals may seek to set fees at a level that would effectively deter specialist firms from taking on such claims. In the Society's response to the pre-consultation last year, we argued that the Government should not bring forward further changes until there had been time for the changes introduced by LASPO to be down and be evaluated; we went on to say that, if the Government was nonetheless determined to fix costs, it should do only for claims up to £25,000 in value.

Last Autumn, we held various focus groups with claimant and defendant practitioners and in light of these and ideas put forward by some individual firms, we have developed our thinking about what a scheme with fixed costs for claims up to £25,000 could look like and which would minimise its impact and risks for claimant, defendant solicitors and claimants.

We continue to work closely with representatives of the Association of Personal Injury Lawyers (APIL), Action against Medical Accidents (AvMA) and the Society of Clinical Injury Lawyers (SCIL) though the latter have recently stepped back from these meetings because they are not convinced the Government will bring forward proposals. We are also arranging a further meeting of our practitioner focus group to update the on our thinking ahead of the consultation.

The Government has not changed its commitment to introducing the new scheme from 1 October 2016. However given the delay this date is looking increasingly unlikely. As this date was originally proposed last summer on the basis of a consultation that was completed in December 2015, we shall be pushing for the start date to be delayed at least to April 2017, as we originally proposed, if not longer.

### **13. APIL Conference**

I spoke at the APIL Conference. Details of my speech can be found at <http://www.lawsociety.org.uk/news/press-releases/plans-to-remove-right-to-recover-general-damages-for-soft-tissue-injuries-robustly-opposed-by-the-law-society/>.

### **14. Consultation on Increasing the Small Claims Limit and withdrawing General Damages for Minor Soft Tissue Injuries**

The Government has not yet published a promised consultation document on how it will implement its decision, announced last autumn, to end the right to compensation for minor whiplash injuries by removing the right to general damages for minor soft tissue injuries and removing cost recoverability by transferring personal injury claims of up to £5,000 to the small claims court (currently at £1,000).

The government has maintained its view that it will not consult on the decision itself, merely on how it will be implemented. We are opposed to anything other than an inflationary rise in the small claims limit (which would raise it to £1,500 to £2,000) and to any restriction on a person's right to bring a claim for compensation for injuries caused by the negligence of another. We are also sceptical of the Government's view that savings to the insurance industry will be passed on to consumers. While Lord Faulks said on 4 May that he "shared [our] scepticism", the government has made it quite clear that it will not interfere with the competitive insurance market so that it will be down to each insurer to decide whether to pass on any purported savings to the policyholder.

We are working in a coalition with APIL and the Motor Accident Solicitors' Society (MASS) and will be responding robustly to the consultation.

### **15. Court and Tribunal Closures**

Item 10 CEO Report to Council May 2016

© 2016 The Law Society

Following the previous round of Court closures, we provided a lobbying pack to members to enable them to continue to pursue local campaigns where relevant. To date, we are aware of public concern only in Kendal.

I met Natalie Ceeney, the CEO of HMCTS on 26 April. The service is facing severe resource constraints, in part to fund development of an online court, and is in the early stages of considering a radical restructuring of how the Courts operate. This will involve seeking to minimise the number of physical face to face hearings, and using technology as much as possible to reduce demands on the service. Another round of court closures is seen as inevitable. HMCTS is keen to have input from the Society to help shape these changes.

Another round of court closures is seen by HMCTS as inevitable, given the savings they are required to generate, and it is possible that there may be an announcement on this before the end of July.

Since the meeting, Natalie Ceeney has resigned as the CEO of HMCT. Interim arrangements are in place.

### **16. Legal Education and Training**

The SRA received over 250 responses to their consultation on the Solicitors Qualifying Examination (SQE). The majority of these opposed the proposals and many criticised the SRA for the piecemeal nature of their consultation and approach in general to what amounts to a major change for the profession. The proposals from the SRA centre around a series of centralised assessments for knowledge and skills, possibly without any pre-requisites for education or training or regulated pathways to qualification, bar the possibility of some form of work-based experience. The SRA have announced that they will pause and rethink their proposals in light of the responses, and have offered assurances that something akin to the current training period will remain, as will the necessity for entrants to the profession to have reached 'degree level'.

A second consultation from the SRA, containing more detail, including the assessment framework for the SQE, further information on what the training period may look like and any specific entry requirements for the SQE, is expected in autumn 2016

The qualitative stage of our research project to find out more about members' training needs is now complete and we are now speaking to a wider group to test the findings. Work is going on in parallel to explore the potential for new collaborative arrangements with a range of established education and training providers.

The Law Society launched a [sign-posting webpage](#) to coincide with National Apprenticeship Week in March. The webpage directs members to useful information on apprenticeships, Trailblazer and the Apprenticeship Levy.

### **17. Investigatory Powers Bill & Legal Professional Privilege**

The Bill continues to make its way through Parliament. We have worked closely with the Bar and, following our successful efforts to ensure there was statutory protection for legal professional privilege in the Bill, we collaborated on drafting to deliver this. We are continuing to monitor the Bill's passage and will also be considering what additional advice we need to provide members.

### **18. Advocacy**

The first scheduled training session for lead facilitators (LF) was held on 16 April. The content received some mixed reviews and Judge Rook's view was that the LFs weren't ready to train the Item 10 CEO Report to Council May 2016

trainers or indeed regular delegates by the end of the training day. Rook and the ATC realise that they have underestimated the change of mindset required to accept the 20 principles of examining vulnerable witnesses which have been disseminated by the Court of Appeal, but of which the professions are seemingly unaware. Revisions to the presentation and structure of course content are being implemented and will be ready in time for the next LF training session on 21 May.

### **19. Pro-bono**

We have been participating in the groups recently set up by the CJC to consider the implementation of an 'Access to Justice strategy' for the wider profession. Four meetings of our members have been planned for May 2016 to help to shape the Law Society's plans for future pro bono initiatives. These include city firms in London, small and medium sized firms in London, the pro bono committee in Birmingham and firms in Wales.

### **20. People Strategy**

Following the conclusion of the Investors in People (IIP) survey window (with over 220 staff responses which is an excellent result) I am very pleased to inform Council that we have now achieved the Developed level of performance, which gives The Law Society the Core IIP accreditation. This is an excellent achievement and a result of the hard work we have put into developing, recognising and supporting our people over the last few months. There is still more to be done but it is a great achievement to have received this in the first iteration.

### **21. Governance Review**

Work is continuing on the Governance review with the governance working group (the group designated by Council to undertake the review), producing a paper of recommended changes to Council (having considered the recommendations in Dr Nicholls paper).

The proposals which were agreed by the majority of the working group at the last meeting are at item 12a. Dr Nicholls paper is at item 12b.

Dr Nicholls has presented to the JLD and at the presidents and secretaries conference. As part of her presentation she outlined the proposals in her paper in principle and asked for a show of her hands on the introduction of a Board and on changes to Council, including the introduction of terms for Council members. The show of hands showed the vast majority to be in favour of the proposals.

### **22. Economic Value**

On Tuesday 22 March we launched our Economic Value of the Legal Services Sector report which shows that a healthy legal sector supports a healthy economy. Our research found that an 8,000 jobs boost follows each one per cent growth in legal services. The report builds on a series of reports we have published recently, including our Europe report and our future of legal services report, showing our thought leadership in areas that are important to the profession.

The first ever investigation of the wider economic value of UK legal services shows:

- 8,000 new jobs are created and £379 million is added to the economy for every one per cent growth in the UK legal services sector
- each £1 of extra turnover in the sector stimulates £1.39 in the rest of the economy
- every 100 extra jobs in legal services supports a further 67 jobs
- the sector grew by 8 per cent from 2014 to 2015
- an estimated 370,000 people are employed in legal services in the UK. 63 per cent are solicitors or employed by solicitor firms

- growth in the legal services sector has averaged 3.3 per cent every year for the last decade – outstripping UK economic growth rate of 1.2 per cent
- net exports of legal services have grown by an average of 5.6 per cent per annum over the last 10 years, to £3.6 billion.

The media coverage of the report has been favourable. I was interviewed on BBC Radio 4's Today programme about the positive news for the sector. The report was also covered by the Financial Times, the Law Society Gazette, the Guardian, City AM, Solicitors Journal, New Law Journal and The Lawyer.

Ahead of the distribution of the report we engaged with stakeholders to share the initial findings of the research and gather feedback. As part of this work I hosted a dinner in Parliament with legally qualified parliamentarians. The President also chaired a Caret Street dinner discussion with representatives from the Treasury, the Financial Market Law Committee, City of London Corporation and PRIME.

### **23. Research and Insight**

There were 727 unique downloads of research reports in March 2016 (down 16% on the same period in 2015) and 2,390 unique page views (up 21% on 2015), not including the Futures Report or the Economic Value of Legal Services report which were not published on the research web page, and for which figures are not yet available.

The Research and Insight Team continues to work on a variety of projects and reports (internal and external).

## Appendix 1

This report provides a summary of the work undertaken within the Law Society's external affairs directorate since Council's last meeting on 10 February 2016.

### 1. The Law Society's strategy and business plan in 2015-16

The new strategy and business plan set out how we will deliver the Society's vision of representing, promoting and supporting solicitors in 2016 and beyond. A large part of this work will focus on actively campaigning on issues of importance to our members. In pursuit of this vision we are focusing on three major streams of campaigning work:

- justice for all
- solicitor brand
- human rights and fundamental freedoms

This report will therefore provide a summary of work undertaken against these activities and some highlights from the business as usual activity, including work on separation.

### 2. Campaigns

#### Justice for all

**Aims and objectives:** As part of the strategy and business plan, we will campaign to protect justice for all, supporting our members to deliver sustainable and affordable legal services and focusing on ensuring access to justice for all our citizens, irrespective of their background.

I met with Bob Neill MP, Chair of the Justice Select Committee, on 11 April to discuss areas of interest to the committee including access to justice, the economic value of legal services and the forthcoming consultation on separation in legal regulation.

Following a ruling of the Supreme Court, the Government has been forced to reconsider the residence test on 18 April during a case backed by the Public Law Project, and in which the Law Society and the Office of the Children's Commissioner were interveners. As a result, the Government will have to reintroduce the necessary legislation in Parliament if it wants to implement the test, designed to reduce access to legal aid for those who are not UK residents.

On 21 April Legal Aid and Courts Minister Shailesh Vara made a statement on civil legal aid and the evidence requirements for cases involving domestic violence. The minister announced that the Government will introduce interim regulations doubling the original time limit for evidence from two to five years and a provision for the assessment of evidence concerning financial abuse. The Ministry of Justice (MoJ) is working with stakeholders to gather data and develop their understanding of these issues. The findings will be used to inform an evidence-based solution to the court's concerns, with the aim of drawing up replacement regulations.

On 21 April the MoJ announced a consultation on increasing fees in immigration and asylum proceedings in the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber). The consultation proposes increasing fees in those immigration and asylum proceedings where a fee is payable so that the fee meets the costs of those proceedings in full. The proposed fee increases are as follows:

- First-tier Tribunal from £80 to £490 for an application for a decision on the papers and from £140 to £800 for an application for an oral hearing
- A new fee of £455 for an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal

The consultation also proposes a fee of £350 for an application to the Upper Tribunal for permission to appeal, where permission has been refused by the First-tier Tribunal, and a fee of £510 for an appeal hearing where permission is granted. The Government will also consult on further extensions to the exemptions scheme. We will be responding to the consultation and pressing the Government to reconsider the proposed increases in the interests of access to justice.

The President of the Law Society was quoted at Oral Justice questions in the House of Commons on 26 April. On a question around the planned changes to the small claims limit and general damages, Nick Thomas-Symonds MP asked if the Government had taken into account the President's comments that he was "gravely concerned" that the changes will undermine the rights of ordinary citizens to obtain compensation for injuries that were no fault of their own. Human Rights Minister and former City solicitor Dominic Raab MP responded saying that the Law Society quite properly protects the interests of its members. He stated that the Government will be looking into the issue "in the round".

#### Human rights and fundamental freedoms

**Aims and objectives:** As part of the strategy and business plan, we will strive to protect human rights and fundamental freedoms, and campaign to ensure that human rights are not eroded.

We submitted written evidence to the Investigatory Powers Bill Committee on 8 April having worked closely to prepare this with Colin Passmore, senior partner at Simmons & Simmons.

On Monday 11 April, the Vice President Robert Bourns also gave a speech on the importance of legal professional privilege at an event in Parliament organised jointly by the Law Society, the Bar Council and the National Union of Journalists. Attendees included MPs, Peers and journalists.

The Law Society has been working with the Bar Council to influence the Investigatory Powers Bill as it currently passes through Committee Stage in the House of Commons. Proposed amendments to Clause 25 of the Bill ("Items subject to legal privilege") drafted by the Bar Council and tabled by the Opposition, were withdrawn after discussion in a recent committee session on 12 April. Leading for the government the Solicitor General said:

- That there are inherent dangers in taking an *ad hoc* approach to defining a particular privilege that is well understood. It might be unintentionally affected by a well-intentioned attempt to seek to define it in the legislation
- The Government also expressed concerns that there will be exceptional cases in which the iniquity rule is not satisfied, where the material will be of relevant interest to the authorities and would be the appropriate subject for a warrant application with the double-lock mechanism: "I am not saying that it will be commonplace - far from it. That is why we have worded the terms of the clause very carefully. We talk about "exceptional and compelling circumstances". I cannot imagine a higher threshold for an applicant to meet than those words"

Conservative MP Victoria Atkins also made the point that any warrants will have to meet the threshold of the double lock, the Home Secretary and the judicial commissioner, who will be very careful to protect legal professional privilege.

The Government is usually not willing to accept changes proposed by the opposition at Committee Stage and any amendments are unlikely to pass. Despite the amendments being withdrawn, issues raised at Committee Stage are likely to be discussed again in the House of Lords as matters of importance that deserve more scrutiny time.

On 20 April the President met with shadow Home Secretary the Rt. Hon. Andy Burnham MP to discuss the Bill. The meeting was productive with a positive show of support from the shadow secretary of state.

#### Solicitor brand - Promoting solicitors at home and abroad - research results and campaigns for 2016/17

**Aims and objectives:** As part of the strategy and business plan, we are developing and will be launching a campaign to promote solicitors and the importance of using a solicitor to get legal advice. The aim is to build pride in the profession, promote the value of legal services to civil society, and communicate the benefits of using a solicitor.

The final report from our research agency Mustard was received on 2 February and this has been discussed Membership Board, SMT and presented to colleagues throughout the organisation. Mustard will present their findings to Council on the evening of 17 May.

We have appointed DTW as the agency to deliver the Consumer campaign and Solicitor Brand campaign for 2017/17 and 2017/18. Their focus is to:

- continue working on the existing Consumer campaign until the Solicitor Brand campaign is ready to launch
- develop the Solicitor Brand campaign working closely with members and colleagues
- support corporate messaging around the value the Society brings to its members
- regularly review the campaign achievements against agreed KPI's which will be reported internally and to Membership Board

On 19 May we are holding a workshop with members and colleagues - facilitated by DTW - to help develop and refine the campaign messaging. We will differentiate solicitors from other providers of legal services, to the public and to personal and business clients, so people can make informed decisions when choosing a solicitor. Messaging developed during the workshop will be thoroughly tested with the wider membership body, the public and business commissioners of legal services.

**Consumer campaign:** we have extended work through May and June while we develop the Solicitor Brand campaign. We are continuing our 'Use a professional, use a solicitor' messaging and the call to action to visit Fins a Solicitor. We are continuing to:

- build on our very successful social media engagement on Twitter and Facebook
- host weekly #SolicitorHour discussions
- promote Pulse Posts on LinkedIn
- promote our short YouTube videos
- run mini campaigns at Easter and bank holidays to promote the six key areas of law

### **3. Wales**

The Wales Office has produced a 'priorities for justice' document focused on Welsh issues to tie in with the National Assembly election. Areas covered include the contribution of the legal sector to the economy and the National Advice Network which will provide a strategic approach to the provision of social welfare advice for communities across Wales.

There is close working with the Welsh Government in respect of the new Welsh taxes function. Meetings have taken place with the Director of the Welsh Treasury to review engagement and look ahead to working with the new government. We have contributed to a gateway review of the implementation programme for the establishment of the Welsh Revenue Authority and the Land Transaction Tax (to replace stamp duty land tax in Wales by April 2018) and facilitated a meeting between Welsh Government staff and a Top 15 firm to review current stamp duty land tax processes to inform the development of new processes for Wales.

The Wales policy adviser has contributed to the drafting of the National Advice Network strategy as a member of a sub-group of the wider network. The strategy will be presented to the new minister following the election and sits within the tackling poverty agenda to ensure access to advice and information.

### **4. International**

The ABA Section of International Law spring meeting brings together around 1500 participants from around the world in addition to senior figures of the ABA. This year the meeting took place in New York, a key market in the US for the Law Society and our members. Attendance at the conference gave us the opportunity to meet a number of key US stakeholders and raise our profile in this important jurisdiction. We took advantage of the Spring Meeting to have further engagement with the New York State Bar Association, which is a key US stakeholder. The Law Society programme included:

- A number of firm visits to meet with both the New York offices of English firms and US/New York firms who employ our members, including Clifford Chance, Laura Devine, White and Case, Hogan Lovells and Norton Rose.
- A seminar on business and human rights at the British Consulate, together with the New York State Bar Association, followed by a networking reception.
- A bilateral meeting with the Korean Bar Association was held to raise the issue of market liberalisation and practise rights.

On Tuesday 5 April, the President hosted a key event with our influential French counterpart, the French National Bar Council (CNB) by:

- Hosting the French delegation for a Carey Street lunch and signing a Memorandum of Understanding with the French CNB President Eydoux;
- Organising a joint seminar on data protection and business and human rights of E&W and French panellists;
- Hosting a networking reception;
- The event was covered by the Law Society Gazette.

On 6 April we hosted a Serbian delegation of 15 judges at the Law Society. The visit was supported by the Foreign and Commonwealth Office (FCO) and British Council Serbia. Serbia recently signed an accession agreement with the EU and they are beginning to prepare their legal (aid) system to meet European standards.

The President also gave a speech at the Business Council of Africa Debate at the Law Society on Wednesday 20 April. Notable members of the audience included James Duddridge MP, Minister for Africa, the Caribbean and the Overseas Territories.

The International team hosted a delegation of seven leading Ghanaian law firms on Friday 29 April. Activities included a discussion and networking session with English firms active in Africa and this was chaired by the President.

The International team recently met with the Chilean Chamber of Commerce's Legal Committee in advance of Chile Day in London in May. To mark the Chile Day celebrations at Mansion House and the state visit by Chilean President, Michelle Bachelet, the Law Society will be providing a market briefing at Chancery Lane. This was confirmed during our meeting in Santiago and will offer members the chance to network with Chilean lawyers and stakeholders. A friendship agreement will also be signed.

The FCO Magna Carta Fund announced on 26 April that they will be informing applicants by 6 May about the outcome of their application. The Society is waiting for a decision on our application for Business and Human Rights for the Americas (£397,450). We are also waiting to hear from the EU about the outcome of our application for £300,000 to fund work in Syria and Turkey.

## **5. Brussels**

Policy announcements are becoming rarer in Brussels in anticipation of the UK referendum on EU Membership on 23 June. Taxation and Anti-Money Laundering are the exceptions following the Panama papers controversy.

The Brussels office submitted the following response to a formal consultation by the European Commission in relation to a Commission feasibility study on the development of an EU VAT web portal.

The Brussels office is also finalising its draft response to the EU Commission consultation on the European Transparency Register of lobbyists and how it impacts on law firms engaged in EU affairs.

On 6 April members of the UK Public Affairs team joined colleagues in the Brussels Office to attend an Enterprise Forum meeting with twelve Conservative MEPs. Brexit was high on the agenda, with a presentation by Jonathan Hill, the most senior British official in the European Commission.

On 7 April the team met with the Regulated Professions team at the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs in Brussels. The purpose of both meetings was to get an update on the EU work on free movement of services and whether there were plans to go beyond the EU lawyers' directives at this stage.

On 15 April the team met with Lee Foulger, representative from Commissioner Hill's cabinet and Capital Markets Union working group, in London. Lee Foulger is in charge of the CMU portfolio in Commissioner Hill's cabinet and provided a timely update to practitioners in our Capital Markets Union working group on securitisation, insolvency and the prospectus regulation

## Appendix 2

### Membership services key activities

#### Communities

Community events in the last couple of months have included the JLD and Civil Litigation annual conferences, Private Client and Family regional seminars, a Careers event preparing students for the profession and the In-house consultative meeting on separation.

We continue to provide tailored information to community members such as the recent Budget Update for our Small Firm members and the publication of the Law Management Section's Financial Benchmarking Survey which attracted 200 participants, the highest number in many years.

Ongoing marketing initiatives include the launch of the sections' new acquisition marketing campaign, a pilot discounted section offer on Twitter which we will consider rolling out on our community social media sites, proactive marketing to warm leads including following up non-section attendees at events and an upcoming regional push on engagement with the Communities. An Insights panel research initiative and online surveys to all sections have been drafted to evaluate the current section offerings and provide feedback on how to improve.

#### Corporate Responsibility Equality & Diversity (CRED)

Applications for the 2016 Diversity Access Scheme closed on 13 April. In total there were 123 applications and short-listing is under way. Interviews will take place in July.

A Wellbeing Taskforce was launched on 6 April in liaison with LawCare. The aim is to take a collaborative approach to managing wellbeing across the profession and to draw on good practice from elsewhere too. The judiciary, SRA, legal academics, CILEx, JLD and the Bar Council were all represented.

The committee of the new LGBT Division has met twice (23 February and 13 April) to develop aims and objectives, and discuss what services to provide to members.

The Women Lawyers Division hosted their two day Returner Course over a weekend in early April. 34 people attended (we also had waiting list of around 20 people) and the feedback has been overwhelming positive, with attendees particularly enjoying getting to grips with their CVs and LinkedIn profiles, plus some very inspiring stories from previous returners.

#### CPD Centre

Between 1 March 2016 – 25 April 2016 the CPD Centre team delivered 14 webinars, with 463 participants

- Careers development webinar: Things to consider before making an application: Tips for getting ahead of the game - achieved 60 participants
- Tailored course specifically for conveyancers: Cyber fraud awareness and protection for conveyancers - achieved 65 participants
- Brussels IV update webinar, included five international speakers and achieved 89 participants

As of 25 April the total number of registered members of the CPD centre was 55,290, which is up from 52,483 in 16 December 2015, and 42,065 in December 2014.

## Events

From 22 February to 25 April 2016, the events team delivered 69 face-to-face events. The event types included: commercial events (19); corporate/low cost/free of charge events (45) and admission ceremonies (5). This compares to 79 events over the same time period in 2015.

Approximately 4,644 people attended the 69 face-to-face events which offered 134 hours of CPD.

Nominations for the 10<sup>th</sup> annual Excellence Awards are open and we have received 14 entries to date, with a further 75 entries in progress. The deadline for submissions is Friday 27 May 2016.

## Library

Following on from an introduction by the Relationship Management team, Michael Maher has been invited by John Hughes, who is about to become President of Birmingham Law Society, to talk about our library services. This dovetails in with the library engagement objectives outlined to Membership Board in November 2015.

The library's email customer satisfaction survey commenced late February. Initial feedback from members using the library has been largely positive with 93% of responders very likely of likely to recommend the service to a colleague and 100% reporting that their request was dealt with in a polite and professional way.

Legal research and LawDocs requests from members rose to 850 per month between March - April, compared to 759 between December 2015 - February 2016. Member footfall between March - April is also up, averaging at 31 members visiting the library each day, despite the current issues with noise from the building work. The library Twitter account had 1,798 followers by the end of April, a rise of 66% compared to the same period last year.

The library team has also completed an audit of all the printed documents to be digitised as part of the first phase of the Corporate Archive collection plan. The digitisation work will be put out to tender.

## Publications and forms

Titles published in April include the Legal Training Handbook and the third edition of Profitability and Law Firm Management, by Andrew Otterburn. We also published a new special report: The Future of the In-house Lawyer: The General Counsel Revolution. This collection of essays by in-house counsel from a variety of different types of organisations adds to a growing portfolio of information published by the Law Society for the in-house market.

The commissioning editors are also working on a number of eLearning courses: new mandatory training to support the Immigration & Asylum reaccreditation scheme, revised core training to support the CQS accreditation scheme and the WIQS 2016 Update courses.

## Membership Services and Support Centre

Quarter on quarter call volumes increased across all teams when compared to the available data for the same time period last year. Between 22 February to 25 April 2016 The Practice Advice Service (PAS) saw an increase in calls of 1.2% taking 4,252 calls. The Find a Solicitor team (FAS) saw an increase of 16% taking 18,021 calls. The Support centre call volumes increased by 1% taking 9,220. The service levels and abandonment rate targets were met by all teams.

'AML' enquiries continue to be one of the most discussed topics for the team (575 in the first quarter 2016). 81 Enquiries on customer due diligence were received in February - this is the highest Item 10 CEO Report to Council May 2016

© 2016 The Law Society

volume on this topic since January 2015 although we are not aware of a specific reason for this spike. The team received 4 scam-related enquires during the period with figures involved ranging from £65,000 to £1.3 m. In addition to individual tailored advice firms were directed to information about scams on our website which they said they found useful.

Calls to the Support Centre on the dedicated FAS Support line (assistance for members with their FAS website profile) totalled 1118 for the period. The main reason for members calling this line is because their profile is suppressed and their record is not showing on the FAS website. During the period 22 Feb – 25 April 221 calls were also logged from members seeking assistance with My Law Society. A high proportion of these (over 50%) continue to be caused by activation emails being blocked before reaching users' email accounts. A workaround has been provided to the Support Centre to enable activation of the accounts and work to resolve the issue is ongoing.

All three telephone support teams are continuing to survey callers and have achieved satisfaction rates above the target of 85%. PAS achieved a satisfaction rate of 98%, FAS 86% and The Support Centre 96%.

#### Accreditation Schemes

We will be moving to paperless applications for CQS and WIQS in the next couple of weeks, with the intention being to roll a similar approach out for the other schemes over time.

In March and April 326 applications were received for CQS accreditation and reaccreditations. The light touch reaccreditation form is continuing to speed up the reaccreditation process.

#### **Civil and Commercial Mediation**

Despite promotion, membership numbers have remained low for this accreditation. Membership Board have agreed that we should research the impact of key changes in mediation which could support the development of a differently formatted accreditation with more relevance our members. The current accreditation will be closed to new applications while the research is underway prior to a further decision at the November Membership Board.

#### **Wills and Inheritance Quality Scheme**

Telephone research is being carried out during May amongst WIQS accredited practices to gain feedback on the content and requirements of the Protocol, the application/accreditation process, the effectiveness of the accreditation to support the generation of new business and how the scheme could be changed/improved.

#### Digital Strategy

Work has started on a digital strategy which will map out what we need to do to design and deliver better digital services to our members. The digital team are working closely with the IT strategy team and will seek input from a variety of members at various stages in the process. Our aim is to provide feedback on the strategy to Membership Board in their June meeting.

## Appendix 3

### Consultation responses

During the period, the Law Society has made the following responses to consultations or calls for evidence. Responses are published online <http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/>:

- LSB consultation on first-tier complaints handling
- Welsh government's consultation on the statement of public participation
- DCLG consultation on implementation of planning changes
- Legal Ombudsman consultation on its draft strategy 2016/17
- LSB consultation on changes to rules made under s. 51 of the Legal Services Act 2007

## Appendix 4

### Litigation Update

#### 1. Campaigning to protect justice for all

As part of the ongoing campaign against LASPO civil legal aid changes, the Society has supported legal challenges brought by the Public Law Project under an agreed Protocol. Three cases were supported by way of adverse costs indemnities, all of which have been successful. The last of the three cases involved a challenge by Rights of Women against domestic violence legal aid restrictions. The Court of Appeal handed down its judgment on 18 February 2016 finding that the rules governing the evidence of domestic violence in order to qualify for Legal Aid were incompatible with the aims and definitions of the parent LASPO Act. The Government has in the meantime decided not to appeal the decision and announced that interim regulations will be put in place while they undertake a research project to establish an evidence base on which to inform longer term arrangements. The LAA is keen to work closely with the Society and other relevant bodies on the research to be carried out.

As part of the ongoing debate in the Court of Protection about how to ensure a fair trial for those who are subject to deprivation of liberty orders (starting with the Re X case in 2014), in January 2016 the Society made written submissions in the case of JM & others providing the Court with practitioners' experience of how much and in what context Legal Aid is granted, and on the potential for using "Rule 3A" representatives to protect clients' interests. The Official Solicitor, Secretaries of State for Health and Justice and various affected local authorities also made submissions.

In his decision on 10 March 2016, the Vice President of the Court set out his clear views that it was not acceptable for persons who faced losing their liberty not to be represented due to the absence of close friends or relatives who may assist or due to a lack of resources within local authorities or the Official Solicitor. He was critical of the Secretaries of State, and laid out six clear suggestions of how the issue can be addressed, all of which require action or deployment of resources by the government. He also forced the government to act by joining the two departments as parties to ongoing cases and required them to engage with local authorities and the Official Solicitor to resolve the lack of representation. The judgment is a clear vindication of the Law Society's concern to protect the rights of vulnerable persons. The deadline for an appeal by any of the parties was Friday 15 April. As no papers have been received, or any update from the Court, it seems the government has decided not to appeal the decision.

#### 2. Speaking up for our members: protecting legal professional privilege

The Society continues to intervene in the ECHR challenge brought by the campaign group Big Brother Watch against the mass data surveillance undertaken by the UK security services. The ECHR granted the Society permission to make submissions focused on legal professional privilege and they were filed in mid-February. The parties are awaiting further correspondence from the Court as to timing and arrangements for next steps. The Society has obtained pro bono advice in this matter.

The Society intervened in the judicial review claim made by Davis MP & Watson MPs to challenge the Human Rights Act compatibility of the Data Retention and Investigatory Powers Act 2014. The claim was successful but the government appealed. The appeal was heard on 22 and 23 October, again with submissions having been filed by the Society. The Court of Appeal referred several questions to the Court of Justice of the European Union about the correct interpretation of European directives and case law, and the Society was granted permission by the CJEU to make written and oral submissions on the referred questions. The matter was heard in Luxembourg on Tuesday 12 April. The Society was the only participant to directly address legal professional privilege

Item 10 CEO Report to Council May 2016

© 2016 The Law Society

and its arguments were then adopted with approval by the claimants. The Advocate General now has to produce a report (likely to be completed in June or July), after which the Court will move to issue a judgment, possibly in August.

### **3. Supporting solicitors and their business**

On 14 April the Court of Appeal gave judgment in *AIG Europe v OC320301 LLP and others*, an expedited appeal concerning the interpretation of the aggregation clause in the Law Society Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered European Lawyers in England and Wales (the “MTC”). The case was heard on March 23.

The interpretation of MTC 2.5(iv) was dealt with as a discrete issue. The underlying claim is for losses suffered by investors in two schemes run by the same property developer and managed through the same law firm and its escrow account. One scheme was in Turkey and the other in Morocco. The Commercial Court had denied AIG’s attempt to seek a declaration that 214 related claims should be treated as one aggregated claim subject to the insurance limit of £3m. That Court found that all 214 claims were separate matters. It found that there was no aggregation at all – not even within each of the two schemes – because the series of related matters or transactions were not “dependent” on each other in any way.

AIG were allowed to appeal. It argued that there was no justification for the requirement of “dependency” for the purpose of an aggregated claim. The trustees of the funds of the former law firm’s escrow account (who faced the consequences of a successful limitation of liability through aggregation) argued that there were two aggregated claims, one for Turkey and one for Morocco, citing case law on “integral relationships”. The SRA (intervening) submitted that, while “inter-dependence” could justify aggregation, the key requirement was that there had to be an “intrinsic” connection between the matters and not just the common identity of a solicitor or some geographical link.

The Court of Appeal decided that the Commercial Court had gone too far in requiring “dependency” between matters in order to justify aggregation. There had to be some connection, but that connection could be wider than dependency. It rejected AIG’s approach, noting that it would give an impossibly wide meaning to MTC 2.5(iv) with the result that any form of connection would be sufficient to invoke aggregation.

To justify its reading, the Court reviewed the *Lloyds TSB* case (2003) and the subsequent response of the Law Society and the insurance industry when MTC 2.5(iv) was developed. It applied the principle that the parties’ choice of words was important and that there were established ways to create an all-embracing “single cause” approach, but that the MTC wording was not one of them. Drawing on *Lloyds TSB*, the Court of Appeal decided that the imprecise wording of MTC 2.5(iv) required the identification (from the context of factual events) of an “intrinsic” factor that connected the transactions.

The Court of Appeal remitted the case back to the Commercial Court with guidance on the approach to be taken to aggregation.

The judgement helpfully provides additional guidance, and the concept of “intrinsic” connection could be pivotal in future litigation.

## Appendix 5

### Media Coverage

There were 423 articles from the mainstream media in March.

#### Key Findings

- **Positive coverage totalled 402 articles in March.**
- **Coverage was driven by the Government's plans to introduce online courts (17 articles), CQS accreditation (14 articles), the Society's 'Economic Value of the Legal Services Sector' report (14 articles), and the SRA's call for independent regulation of the legal sector (13 articles).**
- **'A £25 billion legal sector supports a healthy economy - new analysis shows that an 8,000 jobs boost follows each one per cent growth in legal services' was the foremost press release**, with 14 items. 'Ruling highlights rights of vulnerable people in deprivation of liberty hearings' (12 items) and 'New Investigatory Powers Bill now needs proper scrutiny' (10 items) also gained significant traction.
- **A Law Society spokesperson appeared in 32% of coverage** (134 items).
- **Jonathan Smithers Law Society President was the leading spokesperson**, featuring in 12% of the overall volume.
- **'CQS' was the most prominent campaign**, featuring in 17 positive articles.
- **'Represent' was the principal positive reputation attribute**, appearing in 43% of the Society's coverage.
- **'Regulation' was the key theme**, featuring in 80 articles.
- **Negative content fell month-on-month from 14 to six articles**

Top practice notes	Views
PN - aml customer-due-diligence	6,331
PN - aml	4,491
PN - joint-ownership	4,340
PN - client-care-letters	4,303
PN - aml money-laundering-offences	3,016
PN - consumer-contracts-regulations-2013	2,767
PN - financial-abuse	2,544
PN - conflict-of-interests	2,539
PN - professional-indemnity-insurance	2,439
PN - aml legal-professional-privilege	2,365

Top advice articles	Views
Advice - deprivation-of-liberty	2,872
Advice - ta-form-specimens	2,625
Advice - law-society-launches-new-lpe1-form-for-leasehold-property	2,325

Item 10 CEO Report to Council May 2016

© 2016 The Law Society

Advice - standard-conditions-of-sale	2,221
Advice - ta6-property-information-form-explanatory-notes	1,942
Advice - help-to-buy-isa-schemeconveyancing-solicitors-role	1,489
Advice - new-model-conditional-fee-agreement	1,431
Advice - the-pitfalls-of-solar-panels	1,347
Advice - source-of-funds-clean-or-consistent-risk	1,174
Advice - changes-to-client-care-information-and-leo-time-limit	1,075

Top news and blog	Views
News - new-sdlt-calculator-produced-by-hmrc	4,332
Press - ruling-highlights-rights-of-vulnerable-people-in-deprivation-of-liberty-hearings	1,843
News - residential-stamp-duty-land-tax-reforms	1,646
News - stamp-duty-land-tax-changes	1,564
News - changes-to-sdlt-warnings-to-clients	1,529
News - future-of-legal-services	1,363
News - autumn-statement-changes-to-sdlt	1,297
News - consumer-guide-to-buying-a-flat	1,275
News - scams-targeted-against-solicitors-firms	1,054
Blog - new-beginnings-diary-of-a-start-up-law-firm	943

### Share of Coverage by Sentiment

