

# Chief Executive's Report to Council on Strategic Insight and Influence – Part 1

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## Classification - Public Freedom of Information

Not applicable as this paper is public

### Summary:

This paper provides an update on activities across the strategic insight and influence directorate, including an update on:

- Brand and Communications
- Policy
- Public Affairs and Campaigns
- Futures and Insight

### Recommendations / Conclusions:

This paper is for: noting

**Assessments. This should be either a summary of what is in the paper (cross-referenced to the relevant paragraph), or, if the issues are very straightforward, a full statement of the relevant position.**

<b>Financial:</b>	There are no financial implications arising from the paper.
<b>Risk:</b>	This paper provides an update only on current activity.
<b>E D &amp; I</b>	Inclusivity has been raised as an issue within the SQE. No other issues were raised in this paper.
<b>Organisational Values</b>	This paper focuses on clarity and excellence to provide Council with a detailed update on how we are working to achieve success, including information on what we have been working on and how successful we have been.
<b>Consultation</b>	Senior members across the Public Affairs, Policy, Futures & Insight, and Brand & Communication teams.



## Introduction

This paper provides an update on activities across the Strategic Insight and Influence (SII) directorate during the period January – May 2020.

In the period from January to March, we continued to focus on the priorities established by Council in last year's business planning process. Following this, we created plans to prioritise eight themes of work:

- Access to Justice and the Rule of Law;
- Role of the Profession, Reputation;
- Technology;
- Civil Justice;
- Regulation;
- Brexit and the International Rule of Law;
- Role of the Profession, AML; and
- Property.

We have used these themes as headings to help Council identify how our activities are leading to outcomes on the agreed priorities.

From February on, we started to assess and prepare for the potential impact of Covid-19 on the profession. By the time Government announced the lockdown on 23 March, we had established a Covid-19 steering group to develop a strategy to deal with the business and member impacts of the pandemic. The focus for many of the existing policy themes shifted to reflect the impact of Covid-19 on that particular issue.

## Policy

Although we are continuing to deliver policy work across all practice areas, we have prioritised our work around the Council agreed themes.

### Access to Justice and Rule of Law

#### Wales

As noted by the recent recommendations of the Commission on Justice, poor access to justice remains a significant issue in Wales. We have called on Welsh Government to take steps to address legal aid deserts and shortages of criminal duty solicitors.

We met with the Counsel General, officials and other Welsh Government Ministers to express concern for the current quality of the administration of justice. While the Law Society has no current objection in principle to devolution of justice policy to Wales as a potential solution to current issues, we have made it clear to Welsh Government that we would only be able to fully support such devolution if there were concrete proposals able to meet the following three tests:

- the ability of solicitors of England and Wales to practise across the border without restriction is maintained;
- the current single regulatory framework for solicitors across England and Wales is preserved; and

- the Welsh Government is provided with and subsequently allocates the necessary financial resources to enable it to deliver effective, high quality justice policy and ensure access to justice for all.

## Criminal Legal Aid

The consultation on “accelerated items” in the Criminal Legal Aid Review (CLAR) raised substantial concerns that a significant number of firms would be unable to survive until the final review is published, which had been expected by the end of 2020.

The impact of the pandemic has significantly increased this risk, introducing a new massive financial shock for firms, with the result that the survival for many firms for more than a few weeks is now in question. We are working urgently to persuade the Government to put together a rescue package as part of the Covid-19 business support programme.

We have developed protocols with the police and CPS to ensure member safety in the police stations. We have secured changes to legal aid rules to enable legal aid applications to be completed in circumstances where signatures and documentation cannot be provided.

## Civil Legal Aid - Early advice

All work on the post-LASPO review projects has ceased as a result of the pandemic. Sustainability following a collapse in work has become the biggest issue for civil and family legal aid firms, and we continue to lobby Government on their behalf.

We have secured changes to the obligations of firms under their legal aid contracts, and the need for signatures and documentation to apply for legal aid.

## Legal Aid deserts

A key part of our lobbying work has been to remind Government that this was a supplier base that was extremely fragile even before the current crisis hit. Our campaigning work on this issue has proved a vital backdrop to our ongoing work with the MoJ to try to develop a financial support package.

## Human Rights

There is still no information about the scope and composition of the planned Constitution, Rights and Democracy Commission. We still expect that this will consider both the role of the Supreme Court and the judiciary more widely, as well as possible changes to the Human Rights Act. We continue to engage with political stakeholders to start gathering insight on the likely proposals, and have said that we would seek to be involved in the commission itself.

Following our consultation response from October 2019, we have approached the MoD and have informally briefed media contacts on the Overseas Operations (Veterans and Service Personnel) Bill, which was presented to Parliament in March.

## HMCTS

As a result of the pandemic, the use of video and telephone technology and online systems in the courts has been rapidly expanded. Our lobbying has aimed to balance the need to progress matters as far as possible with the need to ensure justice is done. In some cases, remote working is an acceptable approach. In others, delay is possible. For those cases that

have to go ahead in person, we have worked with HMCTS to ensure that PHE guidance is fully adhered to in order to ensure the safety of our members.

### **Criminal Justice campaign**

The Government review of RUI is likely to be on hold as a result of the pandemic.

## **Role of the Profession**

### **Wales Commission on Justice**

We have met with government officials to develop relationships and working principles around how best we can input into the Welsh Government response to the Commission on Justice recommendation to ensure member views are clearly heard. On 18 February we hosted a member engagement event in the Cardiff office to gather and explore member views that will then form the basis of a position paper on the Commission recommendations.

### **Solicitor Judges**

#### **Pre-Application Judicial Education (PAJE) programme**

Initial feedback on the first round of PAJE workshops was very positive. The second round of workshops was curtailed by the pandemic. We are working with partner organisations to develop a way of delivering these workshops online.

### **Advocacy**

We are continuing to develop the Queens Counsel Appointments (QCA) funded project which aims to support an increase in the number of solicitors applying for QC status. We are exploring the potential barriers which face solicitors in seeking the award. The launch of the campaign has been put on hold because of the pandemic, but we are continuing to develop materials so that we are ready for launch as soon as circumstances permit.

## **Technology and the law**

### **Economic research and member engagement**

#### Research on LawTech education and skills.

We published our report on LawTech skills conducted jointly with Oxford University (OU). The main findings are:

- Only half of respondents had undertaken any form of LawTech training in the past three years, with training in specific software packages the single most popular option (38%).
- Looking forward, survey respondents were generally keener to undertake training in technology and innovation-related issues. For example, 71% of respondents said they anticipated the need for future training in data analytics – compared with 3% who had already received such training.

- A total of 44% of survey respondents said they would be interested in receiving training in innovation techniques, compared with the 7% who had done so within the past three years.
- Four-fifths of respondents believed that further LawTech training would bring about productivity improvements within their organisations.
- 60% of survey respondents were broadly supportive of the statement that “lawyers need to become familiar with multiple non-legal technical specialism, such as data science, project management, and design thinking”.
- However, there was no consensus on whether this was best done by working together with non-lawyers or through lawyers themselves acquiring multi-disciplinary expertise; 60% of respondents – the largest single group of response – said they “neither agreed nor disagreed” with the proposition that “I prefer to work with ‘lawyer-coders’ than with ‘non-lawyer-technologists’.

We distributed the report to external stakeholders, including the members of the LawTech Delivery Panel, the Ministry of Justice and the Department of Culture, Media and Sports. A webinar for stakeholders will also take place next week.

Our press comment emphasised *“The legal sector is a key contributor to the UK economy, generating more than £60 billion in gross-added value in 2018. Lawtech will be an important tool in increasing productivity and ensuring UK firms remain globally competitive. This survey offers an important snapshot of lawtech adoption in England and Wales and highlights the training solicitors need to improve their expertise. We hope this will prove a useful resource for law firms when considering how best to introduce new technologies into their business.”*

### **Preparing the profession for change**

We continue to work to upskill the profession with our Introduction to LawTech series and held training sessions in South London (in collaboration with South London Law Society) and in Preston (in collaboration with the University of Central Lancashire).

Swansea University Law School has recently been awarded £4m in funding to host a LawTech programme for the whole of Wales. We will be working closely with Swansea University to ensure that all opportunities for academia and practice in Wales are fused.

## **Civil Justice**

### **Solicitor Funding Agreements**

Following extensive lobbying by the Law Society and others seeking a delay to the implementation of whiplash reforms, the MoJ announced that the commencement date would be put back from 1 April 2020 to 1 August 2020. Following the pandemic, this date has been further put back to at least 1 April 2021.

All other planned civil justice work is on hold as a result of the pandemic.

## **Regulation**

### **Influencing the SQE**

Since the SRA began to develop SQE in 2014, the Law Society has worked closely with JLD to respond to all four rounds of consultation and the SRA have adjusted their plans to meet many of our key demands. The inclusion of a degree level qualification and two full working years of qualifying work-experience as requirements were major wins.

The Law Society has been heavily engaged in ensuring the profession is aware of the upcoming change to legal education. This is done through the SQE overview available on our website, which outlines all currently known information on the SQE and is a live document, updated with new information as it becomes available.

Alan East (Chair of Education and Training Committee) and other stakeholders have conducted a podcast series focusing on different elements of the SQE. The podcasts aim to provide different perspectives on the SQE's development.

Alongside providing members with key information on the SQE, the Law Society has participated in a range of conferences and roundtables (Legal Cheek, Nottingham University, Coventry, Law Gazette), and consistently provides updates to members through digital communications (social media, professional update, presidents update). In addition to this, we are engaged in a series of meetings with the SRA and the JLD to explore further the remaining issues that need to be addressed with the development of the SQE. These meetings have assuaged many of the concerns raised and been a useful way of influencing the SRA's thinking on developing issues.

We continue to argue for the SQE to be offered in the Welsh language and hold meeting with key officials to discuss the importance of it. The Wales office lead on this work and Jonathan Davies, Head of the Wales office is involved in the next meeting with the SRA, in May, which will cover this issue.

### **Proposed Economic Crime Levy**

In the budget published at the beginning of March, the Chancellor announced the Government's intention to introduce a new levy on AML-regulated businesses to help fund some of the reforms outlined in Economic Crime Plan published last year, with the levy looking to collect approximately £100 million a year.

HM Treasury are planning on publishing a consultation on the levy in May, and the intention is for the levy to commence from 2022/23 onwards. The consultation will seek views on:

- what the levy will pay for;
- which businesses should be paying the levy;
- how levy liability will be calculated;
- how the levy will be collected and enforced; and
- how Government can ensure there is transparency over levy spend.

In our engagement with the Government on the levy we have highlighted the significant amounts law firms spend complying with their legal obligations under AML and economic crime legislation, producing a public benefit, and that further increasing the costs of doing business may have negative impacts on the competitiveness of the UK legal sector and the ability of firms to invest in economic crime measures.

We have also argued that any funding mechanism must focus on the sectors that will benefit from the initiatives being funded, and be designed to target the key areas of risk and that is

of paramount importance that we maintain the international competitiveness of the legal profession of England and Wales

Although due to be published in May, we have been pushing the Government to delay the publication of the consultation until the Autumn due to the significant impact of COVID-19.

## LSB Business Plan

In early April, the LSB published their business plan setting out their key priorities for the year 2020-21. The LSB indicated it wants to increase their sector leadership role by being more outspoken about issues facing the legal sector, more effective engagement with stakeholders, and taking a wider perspective on legal services regulation. This new approach is notable in the LSB's proposal to move away from a strategy for the LSB towards an overall strategy for the legal sector.

The business plan remains flexible to take account of the impact of the outbreak of Covid-19 on the legal sector and support needed for its recovery.

In delivering the business plan the LSB will prioritise work on discharging their statutory obligations under the Legal Services Act 2007. This reflects the points we made in our consultation response. The work will cover:

- Statutory decisions, compliance with the Internal Governance Rules 2019 (IGR) and other core regulatory functions;
- Oversight of Office of Legal Complaints and Solicitors Disciplinary Tribunal;
- Regulatory performance oversight of regulatory bodies; and
- Wider policy areas such as the LSB strategy, ongoing competence, and technology.

Under the business plan the LSB will work on the development of their three-year strategy for 2021-24 and intends to engage stakeholders in the process. The LSB will consult on their draft strategy in autumn this year.

To inform the development of the strategy the LSB will publish a State of the Legal Services Sector report, which will consider the overall health of the sector. As part of this work the LSB may consider what more can be achieved within the existing legislative framework, including potentially reviewing the list of reserved activities.

In relation to Covid-19, the LSB will consider how best to address the issues that the sector is likely to face in the recovery phase and the wider role that regulation might play in supporting and promoting economic recovery.

Other significant areas of work include making a decision on the SRA rule change application on the SQE, reviewing certificates of compliance with IGRs, work on ongoing competence, and a review of Practice Certificate Fee (PCF) including non-regulatory permitted purposes.

The Law Society responded to the LSB consultation on their business plan and broadly supported the proposed work, but suggested the LSB prioritises work on discharging their core statutory function and holding frontline regulators to account.

The LSB responded positively to our recommendation. For example:

- they took on board our concerns about the lack of adequate impact assessments in rule change applications submitted by regulators and said they would consider impact assessment requirements as part of their review of materials and processes used for statutory decisions;
- they acknowledged our call to improve their regulatory performance assessment work and make more progress in areas where regulatory bodies fall short of expected outcomes; and
- they gave a commitment to review the performance framework periodically and further assess its effectiveness.

We plan to engage closely with the LSB in the delivery of their workplan in key areas relevant to the Law Society, and in particular in the development of the three-year strategy.

### **SRA Strategy**

On 20 March, the SRA published their new three-year strategy following a stakeholder consultation, with 17 formal responses submitted and feedback received from some 150 members of the public and the profession.

The strategy sets out three high level objectives:

1. Setting and maintaining high professional standards for solicitors and firms as the public would expect and ensuring that a commitment to excellent operational service and a positive customer experience is at the heart of all it does.
2. Actively supporting the adoption of legal technology, and other innovation, that helps to meet the needs of the public, business community, regulated entities and the economy.
3. Continually building the SRA's understanding of emerging opportunities and challenges for the users of legal services, the legal sector and its role in effectively regulating it.

Although the core objectives remain unchanged, the SRA made a number of changes to the detail in response to feedback received from the Law Society. For example:

- the SRA confirmed their on-going commitment to provide clarity about their regulatory expectations and expand their work on developing further guidance and information to support the profession in understanding the new Standards and Regulations;
- they confirmed that public protection and setting and enforcing high professional standards will constitute the core of their work and will be resourced appropriately, and they will monitor diversity impact of their recent and on-going reforms; and
- they provided assurance that the focus for the third objective "to anticipate and respond to change" will be on areas that are directly relevant to their regulatory objectives and functions, and that they will expend most of their resource on work to maintain high professional standards and high standards of operational delivery.

The SRA said that in delivering this objective they want to work closely with others in the sector, including the Law Society to understand more clearly the risks and the core issues facing members of the public and legal professionals alike.

The strategy was published before the Covid-19 crisis took hold so the SRA work priorities may change in response to dealing with the crisis. The Law Society is liaising closely with

the SRA as the situation develops to help support the profession and help solicitors continue to work in this challenging environment.

### **SRA Compensation Fund consultation**

The SRA consulted on possible changes to their Compensation Fund, which were intended to ensure its long-term viability by reducing grant payments. In our response, we were largely supportive of the SRA's proposed reforms, many of which were based on suggestions we made in our response to their previous consultation on this matter, in 2018. We were particularly concerned however about their intention to restrict claims to the clients, trustees or beneficiaries of a defaulting solicitor, and the reduction of the maximum grant from the current level of £2 million, to £500,000. We had other lesser concerns about some other aspects of the proposed reforms, including the implementation of a multiple application cap.

### **Legal Ombudsman (LeO)**

In January 2020 we responded to LeO's discussion paper entitled 'Transparency and Reporting Impact' which sought views on a number of options around extending its current reporting of decisions. We raised several concerns about the significant costs and resource implications in relation to most options, many of which could adversely impact the profession and on LeO's ability to perform its core functions leading to greater delays and an increase in its backlog.

The Office of Legal Complaints (OLC) also released a consultation on its Corporate Strategy for 2020-23 in December 2019. Our Response, submitted on 14 February, raised concerns about LeO's performance and the lack of clarity regarding what was being proposed as well as opposing the substantial budget increase (£2.4m) being sought. The OLC had not provided information about how the increase would be funded or any evidence-based explanation or assurance that this will result in a clear improvement in service delivery both to legal service users and providers.

The Law Society's opposition was echoed by the Bar Council and the LSB who also shared 'significant concerns' about LeO's performance. With mounting criticism, the OLC withdrew its proposed budget increase in favour of an inflation-only increase.

As a result of both responses the new OLC Chair, Elizabeth Davies, has asked for greater engagement with the Law Society to better understand the profession's concerns and for the Society to provide feedback on certain processes. She said she wishes to regain the trust of the profession by demonstrating that LeO / OLC is listening and taking action.

## **Brexit and the International Rule of Law**

### January – May 2020

The EU and the UK both ratified the Withdrawal Agreement at the end of January 2020 and the UK left the EU on 31 January. We are currently in the transition / implementation period, during which the UK remains part of the EU single market and customs union but does not take part in the EU institutions in Brussels, Strasbourg and Luxembourg. The transition /

implementation period will end on 31 December 2020 unless the EU and the UK agree to an extension for up to two years by 1 July.

Negotiations on the future EU-UK relationship are ongoing but have also been seriously impacted by the Coronavirus pandemic. The legal text of the EU proposal has been made available but not the UK text.

We have continued engaging with stakeholders in the UK and in the EU on the keys asks of the legal profession in our future relationship while accepting that these will be made within the framework of a Free Trade Agreement and not based on our continuing participation within the Single Market.

After much debate, the UK government has applied to join the Lugano Convention on recognition and enforcement of judgment which was a key ask from the Law Society. The four EFTA Member States have indicated their support, but the EU now needs to agree. This will be a challenge due to the perception in some quarters (and which we dispute) that the Lugano Convention is a Single Market instrument.

We also continue supporting members in their Brexit contingency planning on issues such as requalification of individuals, continuing right of practice as non-EU lawyers post-transition period and, if necessary, restructuring of practice vehicles. Outside of the single market framework, our members face 31 different regulatory regimes (EU27 and EFTA4) and need to adapt accordingly. Where it has been possible, we have engaged in bilateral discussions with European bars and law societies on whether there is a scope for reforms in their national regulatory framework to ease the position of our members post-Brexit.

The future relationship which the UK government is going for will also mean that the UK has an independent trade policy post the transition period. The Department for International Trade has prioritised negotiations for Free Trade Agreements with the USA, Japan and Australia as first-tier priorities and with New Zealand and the UK acceding to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) as next priorities. We are inputting directly into DIT on the market access barriers our members face in this market. Needless to say, these negotiations have also been impacted by the Coronavirus pandemic and while some of this work is about negotiating new commitments from partners, the FTA with Japan needs to be place by the end of 2020 if we are not to lose the market access currently afforded by the EU-Japan FTA.

Other international activities have included a trade mission to Japan; the inception of an FCO-funded two-year project with China; and a meeting with the Indian Ministry of Law and Justice to discuss market liberalisation.

Our international promotional activities (under the Global Legal Centre campaign) have been significantly impacted by Covid-19, with the cancellation of English law days / weeks scheduled for Q2 and Q3 and significant risk for Q4. We are looking at developing digital content to complement our offer, whilst also working on the translations in Mandarin, Russian, Arabic, Spanish and French of our updated (December 2019) Jurisdiction of Choice brochure.

Our international rule of law work continues with Lawyers at Risk intervention letters and submissions while International Women and the Law activities in the shape of roundtables in other jurisdictions have been impacted by Coronavirus.

We are in the initial stage of discussing with the World Bank their proposal for a Rule of Law Compact with Law Societies and Bar Associations. The World Bank has also approached the French Bars which have expressed an interest.

## Ongoing TLS activities

### Brand and communications

#### Media

The media team have generated double the volume of proactive media coverage compared to the equivalent period last year with a strong focus securing regional media opportunities for members (often addressing public legal issues and concerns arising from Covid) and national media coverage for Office Holders and committee chairs including appearances on the Today programme and in The Times amongst many others.

March 22 to April 26, 2019:

- Articles namechecking 'the Law Society of England and Wales': 157
- Articles namechecking 'the Law Society': 5,038

March 20 to April 24, 2020:

- Articles namechecking 'the Law Society of England and Wales': 387
- Articles namechecking 'the Law Society': 11,768
- Articles namechecking 'the Law Society' + Covid': 4,192
- Articles namechecking 'the Law Society' + pandemic: 2,479

Broadcast coverage over the same period: 35 pieces

### Member Communications and website

We have seen a significant rise in member engagement with key Society updates through the crisis as well as a significant rise in the volume of member and public traffic to our website.

Updates from the President to all members were opened by over 50% of members during the first weeks of the lockdown. All of our outgoing communications, from newsletters to marketing e-mails drove traffic to the Covid -19 pages on our website which saw a peak of 40,000 pageviews in one day. Our Weekly Professional Update also saw a significant increase in open rates. Analysis showed that visitors were staying twice as long as usual on our pages, implying that they were finding useful content. The pages were updated daily with new content in a fast-changing environment.

We have maintained the old and new websites during this period and are now driving all Coronavirus traffic to the new site as we prepare to roll out the new My Law Society during June.

## Futures and Insight update

### Surveys to inform our Covid-19 response

The Futures & Insight team have worked to develop member research to inform our views on member experiences and shape our lobbying priorities. Surveys have been conducted with the largest 50 firms, the largest 250 firms and smaller firms and we are currently in-field researching the views of in-house members.

Through April further surveys were conducted covering impacts related to protected characteristics (D&I).

In total we have received over 1,000 responses. Findings are being used to inform the work of the COVID steering group which coordinates the response of teams across the organisation.

### Other projects

The depth research with the **largest 50 law firms** has been completed and being reviewed internally. The research explored engagement with and perceptions of the Law Society, firms' priorities over the next 3-5 years and interest in the Law Society's 7 themes of work. The **Annual Member Survey**, collecting data on KPIs is in reporting stage, results will be shared with the Board in May. **Future Worlds 2050** is well underway. This research will examine the multiple factors/drivers of change impacting society and the provision of legal services over the next 30 years. The aim is to build a plausible picture of the world in 2050 and, within that world, question the changing role of the law, of legal services and modes of service delivery. This will enable us to explore the associated implications in the nearer term for our members and for the Law Society to inform a strategic approach to preparing for change. **Horizon Scanning** remains an ongoing activity and is currently focused on topics including: ['The Future of...'] Trade; Data; Payments, The Company; Privacy; Government; Collaboration. The intention is to compile findings into short reports to share and discuss with a range of stakeholders. The next report to be published will be on Digital Transformation and provide an overview of the future of digital business. At present scanning is being run in parallel with a PESTLE analysis of the impacts of Covid-19 and how emerging signals of change might play out differently on the back of the current pandemic.

## Publications

Findings from the [2019 PC Holder Survey](#) have been published, reporting on use of technology, health and well-being, access to flexible working, workplace culture, social mobility and earnings. A supporting [technical report](#) was also published with details on how an online approach was trialled, to test response rates and to identify any potential response bias between online and telephone approaches. The LMS [Financial Benchmarking Survey](#) has also been published, providing insight into firm finances and guidance on how firms can use their accounts data to improve financial performance.