

Report from Law Society Council Member – Lubna Shuja

Update from the Law Society Council Meeting on 7 December 2017

I attended the Law Society Council meeting on 7 December 2017 in my capacity as Council Member representing sole practitioners. I attach below a summary of the key issues discussed by the Council during that meeting. If you would like any further information, or wish to discuss any issues affecting sole practitioners, or you would like me to raise any matters with the Law Society, please do not hesitate to contact me on info@legalswan.com or on 0121 551 7866.

General Data Protection Regulations (GDPR)

The General Data Protection Regulations (GDPR) come into force in May 2018 and the Law Society website contains information to assist with preparation for this. Listed on the website are 10 aspects of the GDPR that your compliance review must cover.

Criminal Legal Aid Update

Litigator Graduated Fee Scheme (LGFS)

The Ministry of Justice (MoJ) announced that it will be going ahead with the proposed cut to the Crown Court Litigator Graduated Fee Scheme (LGFS), which will reduce the Pages of Prosecution Evidence (PPE) limit from 10,000 to 6,000 pages. Any PPE above 6,000 will need to be claimed under 'Special Preparation' (SP). The Law Society strongly opposed this cut in its response to the MoJ's consultation. Members undertaking this work indicate that this cut will reduce their fee income by a considerable amount. The MoJ's Response to Consultation estimates that "legal aid providers submitting claims with above 6,000 PPE will receive around £26m to £36m lower fee payments" as a result of this change. The MoJ has stated that it will not however be reinstating the suspended across the board cut of 8.75%.

The Law Society has instructed counsel and has issued a Pre Action Protocol letter before action to the Lord Chancellor, with the aim of issuing judicial review proceedings against this decision to cut further the fees for criminal legal aid work.

The proposal for this short-term cut to the LGFS calls into question The Law Society's future engagement with the longer term reform of the scheme. Work in the Crown Court often subsidises magistrates court work, which is no longer profitable on its own. There are concerns that this cut will have an impact on access to justice for vulnerable clients if legal aid firms can no longer afford to undertake this unprofitable work. The Law Society recently published a report that indicated that the age profile of criminal practitioners is increasing as young solicitors find criminal practice increasingly unattractive. Further details are on the Law Society's website.

Crime Contracts

The 2017 crime contract started on 1 April 2017. There have been a number of issues raised by members around a new requirement for duty solicitors to undertake 14 hours work per week for the office that holds the duty slot in their name. This requirement is aimed at removing the duty rotas of 'ghost' duty solicitors who actually have little or no connection to the firm that gains the slot. However the rule is being interpreted in a narrow way by the LAA. The Society has been assisting some of the firms that are in disputes with the LAA. The Society has formed a new 'Contract Review Group' (CRG) with the other Practitioner Groups, to engage with the LAA in order to find a solution to these issues.

Flexible Court Operating Hours

Following extensive lobbying by the Law Society and others, HMCTS had announced the deferral of the Flexible Opening Hours pilot, to allow further engagement with court users as well as a further tender process to secure an independent evaluator. HMCTS are intending on running many flexible operating hours pilots from February 2018. The pilots were initially proposed to commence from autumn 2017 but they have been pushed back due to an unsuccessful evaluation tender. HMCTS are clear that their intention is not for people to work longer hours. However, the Society believes HMCTS have provided no solution as to what measures will be adopted, or what listing techniques will help obviate this risk. The Society also has concerns as to how flexible hours in one jurisdiction would affect other jurisdictions and work such as the immigration tribunals. Further members have expressed their concern that hours will be extended and not flexible, and will cause difficulties for those with caring obligations.

Wills and Equity

The Law Commission makes a number of proposals, including around electronic wills, relaxing the formalities to making a valid will and bringing clarity to the law on testamentary capacity. The Law Society will be responding.

Lobbying on Brexit

All of the Law Society's major requests on civil justice co-operation after Brexit were adopted and a significant amount of its messaging was reflected in the Government's paper on cross border civil judicial co-operation which was published in mid-August. The Law Society has fully engaged in the Government's work on Brexit maintaining five key priorities:

- Continued mutual access for solicitors to practise law and base themselves in the UK and EU member states
- Continued mutual recognition and enforcement of judgments and respect for choice of jurisdiction clauses in the UK and EU
- Ensure that legal certainty is maintained throughout the process of withdrawal, including transitional arrangements
- To maintain collaboration in policing, security and criminal justice
- Ensure that the Government works effectively with the legal services sector to continue to promote England and Wales as the governing law of contracts, the jurisdiction of choice and London as the preferred seat of arbitration

The Society had submitted written evidence to two parliamentary committees and held meetings with several key stakeholders. It had also been active in a number of Government industry/sector groups. The Law Societies' Brussels office had also organised a series of meetings with MEPs and law firms.

Law and Health Outcomes

There is a growing awareness that early legal advice can improve health outcomes where patients have access to legal advice to resolve issues that might be causing or contributing to a health condition. Health Justice Partnerships (HJPs) are arrangements that enable patients to obtain legal advice in the same location as their GP or hospital, potentially resulting in lower NHS costs as well as benefiting the patient. There are a few ad hoc HJP projects in England and Wales. The Society wishes to promote awareness and implementation of HJPs as a means to increase access to justice. To that end the Society will convene a round table meeting of stakeholders to further this project with further research on potential benefits and on funding opportunities. The longer-term aim would bring together the experts in this field and build a lobbying group together with a communications plan, stating why this helps and how this would aid the NHS in saving money.

VAT and Disbursements

Council was provided with information about the potential consequences and implications for firms of the Brabners judgment, in which the Tribunal had agreed with HMRC that electronic searches formed part of the overall service provided to a client by a solicitor and therefore were subject to VAT between solicitor and client, even if VAT was not charged on the search by the search provider. This was a First Tier Tribunal decision, and therefore not definitive. Firms receiving a similar approach from HMRC in respect of historic electronic searches retain the option to go to the First-tier Tribunal. The Law Society is working on issuing guidance and making an approach to HMRC about this.

Legal Professional Privilege

The Law Society will be seeking permission to intervene in the appeal in SFO v ENRC, which is listed for early July 2018. The Society will be seeking to challenge the High Court's narrow interpretation of the scope of legal advice privilege and litigation privilege in the context of corporate internal investigations conducted in anticipation of regulatory or criminal proceedings.

Other Updates on Supporting the Profession

The Law Society had also been making submissions to HMRC on other matters including the proposed penalties for 'enablers' of tax avoidance. Council also noted the creation of a Law Society Quality and Standards in Education Committee to provide expert oversight of all aspects of quality and standards associated with the Society's education, training and accreditations. Council approved a refresh of the Society's logo to ensure that it remained fit for purpose in the digital age. This would be rolled out during 2018.

International engagement

Council noted that the Society had been represented at the International Bar Association Annual Conference. The Society had also attended the Union Internationale des Avocats (UIA) annual congress in Toronto where President Joe Egan spoke on the disciplinary rules that should apply to lawyers working under mobility rules. At the end of November, the Society hosted the second round-table on women in the law, championed and chaired by vice president Christina Blacklaws, at which the strategy for the international programme on women in the law was presented and agreed.

Changes to governance for 2018

Council received a further progress report on the implementation of the new Law Society Board and its two main supporting committees (Policy and Regulatory Affairs Committee, and Membership and Operations Committee). The Board should be in place by the end of February 2018 and the Committees by the end of March. Council approved the Selection Committee's recommendation that Robert Bourns, past president, should be appointed as Board Chair. Other external recruitment and elections among Council members are now underway.

President's report

The President made his half-yearly report to Council. He had engaged extensively with political and non-political stakeholders both over the party conference seasons and in regular meetings with ministers and opposition spokespeople. There had also been active engagement with the judiciary, including a meeting with the new President of the Supreme Court, and the new Lord Chief Justice at whose swearing-in the President spoke on access to justice covering topics including court fees, criminal legal aid, and the courts modernisation programme. The President had also spent a great deal of time meeting local law societies and other organisations.

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SPG Law Society Council Member
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