

## Country Report

# ENGLAND AND WALES

## The Law Society of England and Wales

This report provides a summary of key developments in the regulatory landscape of the legal services market in England & Wales in 2019 as set out below:

1. Regulation - Anti-Money Laundering and Financial Crime
2. Legal Professional Privilege
3. Algorithms in the Justice Sector
4. Brexit and International Trade
5. Access to Justice
6. Diversity & Inclusion

### **1. Regulation - Anti-Money Laundering and Financial Crime**

#### *Economic Crime Plan 2019-2022*

In July the UK Government's Economic Crime Plan 2019-2022 was published. The Law as members of the Legal Sector Affinity Group and Economic Crime Strategic Board, will be involved in taking forward several action points: Undertaking collective threat assessments; Reviewing barriers to information sharing including between private sector actors; Strengthening the consistency of professional body supervision; Promoting digital identity verification services; Education and awareness raising on economic crime threats and the recovery of criminal assets. A number of other initiatives under the plan will have significant impacts on the legal sector and may involve regulatory shifts. These include proposals for a sustainable resourcing model (potentially funded through a levy) and potential operational and statutory reforms of the Suspicious Activity Reporting (SARs) regime.

### **2. Legal Professional Privilege**

Legal professional privilege (LPP) plays a crucial role in ensuring the proper administration of the justice system. The Law Society engages with government and public sector actors to seek to protect the boundaries and principles of privilege. We also make practical interventions in the courts to inform the development of the common law on LPP. We raise public and member understanding of LPP through the media and our own publications, including our practice note on the subject. Where LPP concerns arise in relation to specific pieces of law, we consult with members and seek to represent their views to government and identify practical solutions that protect people's rights.

### **3. Access to justice and LawTech**

#### *Algorithms in the justice sector*

Technology is underused in increasing access to justice and there are significant barriers to technology adoption in the justice system and legal sector. The benefits of technology outweigh the challenges. A lot of great work is being done by firms, advice clinics and in-house teams to meet the legal needs of the public supported by technology. Despite the progressive adoption of technology, face-to-face advice is irreplaceable for certain types of clients or cases – technology can be an aid, but it is not a substitute. Our Technology and Law Public Policy Commission has



explored the role of, and concerns about, the use of algorithms in the justice system. We held four public evidentiary sessions, interviewed over 75 experts, and read over 82 submissions of evidence and many more supplementary studies, reports and documents.

The report of the Law Society's Commission on the use of Algorithms in the Justice System found that the use of biased or oversimplified data can lead to discriminatory decisions, shallow understandings of complex issues and a lack of long-term analysis.

Challenges include loss of individuality, autonomy and human rights such as privacy and freedom from discrimination, reduced transparency in decision-making, lack of scrutiny and risks to specific elements of the justice system, such as procedural flaws leading to unfair trials, and complex cases that could establish important legal precedents being managed out. Our report makes recommendations to strengthen oversight mechanisms and institutions, data protection regulations on fairness and transparency. Algorithmic systems in the criminal justice system must be carefully controlled and allow for amendment, transparency, and monitoring of relevant human rights considerations. The lawful basis of all algorithmic systems in the criminal justice system must be clear. Significant investment must be carried out to support the ability of public bodies to understand the appropriateness of algorithmic systems and, where appropriate, how to deploy them responsibly.

#### Technology and the law

Faster adoption of new LawTech could reduce the cost of legal services to UK business users by £350 million by 2030. The Law Society anticipates that the adoption of new technologies could increase productivity growth in the legal sector from 1.3% per year to 2.7% per year. The legal services sector is also a facilitator of wealth generation in other sectors. The development of LawTech will lead to lower prices for consumers of legal services and will make them more accessible to businesses and citizens. Public funding for research, infrastructure, education and co-ordination will enable the UK to maintain its position as a global legal centre and to secure its position as a leading hub for development of LawTech.

## **4. Brexit and International Trade**

### Trade in legal services

Access to markets for legal services is usually made up of provisions taken at WTO (World Trade Organisation) level and/or in a given trade agreement and domestic regulation. In the case of lawyers, it is very often in the hands of a national bar association or law society. A trade agreement is often a blunt instrument in terms of achieving liberalisation in services, as dealing with domestic regulations is not as simple as seeking to lower tariffs on goods.

If we are to unlock the potential of legal services as an export, we need to ensure that any ongoing and forthcoming FTA (Free Trade Agreement) negotiations include an ambitious legal services chapter, increasing transparency of restrictions, locking in existing restrictions and setting out clear commitments to liberalisation.

We are calling on the Government to prioritise legal services – a key export sector for the UK – in future trade deals.

### Transition period and future relationship

We welcome the transition period and hope this will allow the UK Government and EU to negotiate the most ambitious settlement possible for legal services. While we acknowledge that the pace of the negotiations is a matter for the UK Government to decide, we simply ask that speed does not come at the expense of an ambitious agreement that delivers what the legal services sector needs. We are pleased that this Government continues to see civil judicial co-operation as a priority to be included in the future UK-EU relationship and we support the need to seek to accede to the Lugano

Convention as soon as possible. The future UK-EU FTA should also include provisions to facilitate trade in legal services. This should include:

- Provisions allowing the provision of legal services in the EU by providing rights to advise clients on home state law and public and private international law via all four GATS modes.
- Provisions to support the right to provide legal services by ensuring through visa facilitation
- Provisions to facilitate investment (or establishment) within the territories of both parties to be able to set up a firm, partner and employ local lawyers.
- Mutual recognition of qualifications and a clear path for requalification into the host state legal profession.

#### Open jurisdiction

Whatever happens in the Brexit process, England and Wales will remain an open and welcoming jurisdiction for foreign lawyers looking to practise and establish here. Apart from a small number of legal activities which are reserved to legal service providers regulated in the UK, you do not need to be a qualified solicitor of England and Wales to provide legal services and/or draft contracts under English law.

London is home to legal professionals from 100 jurisdictions and 200 foreign law firms, and they are an integral and valued part of our legal sector. For European lawyers, qualifications that have been recognised by the end of the transition period will continue to have effect after the end of the period. During this time, need to have been registered as Registered European lawyers (RELS) in a particular jurisdiction for at least three years by the end of the transition period in order to be able to requalify in that jurisdiction. In the UK, the Solicitors Regulation Authority (SRA) will stop accepting applications to register as RELs on 31 December 2020 and those already registered as RELs will be able to apply for requalification until 31 December 2020.

## **5. Access to Justice**

### Court modernisation

HM Courts & Tribunals Service (HMCTS) is halfway through a reform programme to modernise the courts and tribunals system by creating services that are digital by default and design. In March 2019 they announced a one-year extension to the programme and anticipate completion in December 2023. The extension takes into account our concerns about the risk that the fast pace of this ambitious reform programme would not allow sufficient time for testing, evaluation and evidence that technology works.

We welcome modernisation of the courts provided the proposals are not driven by austerity measures (access to justice must remain at the heart of the programme) and technology is not implemented unless it has been tested, evaluated and proven to work. We are engaging regularly at all levels to put forward the views of our members. We have been consulted on prototypes of the online processes.

Some of the reforms will have a positive impact on access to justice where digitisation will make processes simpler and faster. However, there will be times when only face-to-face physical hearings will deliver justice.

### Judicial Diversity

The Solicitor Judges Division provides networking and development opportunities and brings together aspiring and experienced solicitor judges to share advice. It aims to increase the number of solicitor judges, by encouraging solicitors of diverse experience and backgrounds to apply for judicial posts. We believe that increasing the number of solicitors appointed as judges would contribute to both greater diversity of the judicial cohort.

We provide online information for members interested in the judiciary as well as targeted training sessions and seminars. We host expert seminars for key stakeholders to discuss the appointment



process and judicial diversity, focusing on the appointment and progression of solicitor judges., The Law Society's toolkit for solicitors explains how to become a judge in England and Wales

We support the Pre-Application Judicial Education scheme aimed at those that are eligible for judicial appointments from underrepresented groups – ethnic minority lawyers, women lawyers, lawyers with disabilities and/or solicitors and chartered legal executives and those from a non-litigation background including academics. The scheme enables lawyers to explore the realities of being a judge as well as any perceptions they may have of barriers to a judicial career.

## 6. **Diversity and Inclusion (D&I)**

### *TLS Diversity and Inclusion charter*

Our 2009 Diversity and Inclusion Charter is a pledge-based initiative which our members' firms could sign up to and be awarded for reaching certain criteria. In 2018 the Law Society's D&I team started a comprehensive review of the Charter, including consulting our members, and reconstructing it to better serve the profession. The charter's five categories (gender; LGBT+; race and ethnicity; disability and wellbeing; and social mobility) will be subsumed into one encompassing application offered over three levels (Bronze, Silver, Gold): Bronze - understanding your organisation and creating a baseline. Silver - creating and sustaining impact. Gold - being an exemplar organization. Our aim is to challenge the legal sector's D&I practices, encourage growth and excellence and provide a framework for firms to build upon. We launched the pilot stage of the review process with 12 firms across the country and of varying sizes, focusing on the gender module in April 2019. We have been supporting participants with monthly calls offering guidance and receiving feedback.

### *Women in Leadership in Law*

In the centenary year of the Sex Removal (Disqualification) Act, we continued to work on gender equality in the law to create a more equal profession. Women are still not reaching senior positions in equal numbers to men. Our survey on women in the law in February 2018 showed that 50.2% of practicing solicitors are women yet women only make up 30.1% of partners in private practice. The main barriers to career progression perceived as: Unconscious bias, unacceptable work/life balance demanded to reach senior levels, traditional networks/routes to promotion that are male orientated, resistance to flexible working practices, and the gender pay gap. 60% are aware of gender pay gap in their place of work, but only 16% see visible steps to address the issue.

### *Women in Law Pledge*

At our international symposium on women in the law in June 2019, the Law Society launched our women in law pledge with CILEx and the Bar Council to encourage greater diversity in the profession. Firms were invited to sign up to the Pledge. Organisations who sign the pledge will commit to support the progression of women into senior roles in the profession by focusing on retention and promotion opportunities, set clear plans and targets around gender equality and diversity for their organisation, and engage with the Law Society on progress made.

### *International Women in Leadership in Law*

We held 34 roundtables in 18 jurisdictions, with over 712 women lawyers participating. Data and testimonies gathered from the roundtables were included in the Law Society "Advocating for Change: Transforming the Future of the Legal Profession through greater Gender Equality" report, published June 2019. The report demonstrates that key issues for women lawyers globally include: traditional gender roles and stereotypes, the gender pay gap and flexible working.