

## **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 services market in England & Wales over the past year, as set out below:

1. Cooperation with international bar associations and law societies
2. The Rule of Law
3. The Post Office scandal and professional ethics
4. Climate Guidance
5. Artificial Intelligence

#### **1. Cooperation with international bar associations and law societies**

We are continuing to work closely with European bars and law societies in order to facilitate the work of lawyers operating between jurisdictions throughout Europe. Our EU counterparts have provided excellent support to UK lawyers and law firms operating in their jurisdictions.

London is home to legal professionals from 100 jurisdictions and to 200 foreign law firms. They are an integral and valued part of our legal sector. Lawyers from abroad are, and will continue to be, able to establish practises and firms in England and Wales, partner with solicitors, practise their home country law, international law, EU law, and English and Welsh law outside a small number of reserved activities. They can also requalify in England and Wales by sitting the Solicitors Qualifying Examination (SQE).

It is positive to see that the EU-UK Trade and Cooperation Agreement (TCA) includes provisions which protect the ability of UK lawyers in certain EU member states, and EU lawyers in the UK, to practise under home title. We are working with governments, bars, and law societies to ensure these provisions are fully implemented. We welcome the fact that Luxembourg passed legislation in June 2023 to allow UK lawyers to register to practise home country law and public international law, in line with the relevant TCA provisions.

We are also analysing challenges related to the functioning of the Agreement, to feed into the review of the Agreement due for 2026. We are especially interested in facilitating business travel of lawyers between the UK and EU.

We welcome the bilateral agreement that the UK signed with Switzerland in June 2023 (the UK-Swiss Agreement on the Recognition of Professional Qualifications), which ensures that UK and Swiss lawyers will maintain a clear and proportionate route to requalify in each other's jurisdiction after similar provisions under the UK-Switzerland Citizens Rights Agreement expire at the end of 2024.

In the context of ongoing negotiations for an enhanced Free Trade Agreement with Switzerland, our main priority has been to ensure that certain mobility provisions in the Services Mobility Agreement are incorporated in the body of the FTA. This provisions,

which will expire at the end of 2025, allow UK lawyers to provide their services in Switzerland for up to 90 days per calendar year without a visa/work permit.

We will continue to monitor the implementation of this agreement.

## **2. The Rule of Law**

### **2.1. UK-Rwanda Migration and Economic Development Partnership**

The UK-Rwanda Migration and Economic Development Partnership was announced in April 2022. Under this agreement, people claiming asylum in the UK who have arrived through unofficial routes would instead sent to Rwanda, where they would have their asylum claims processed.

There are significant concerns that this policy would contravene international law, including the European Convention on Human Rights and the United Nations Refugee Convention, and is currently subject to legal challenges in the domestic courts.

The UK Supreme Court decided in November 2023 that, while sending asylum seeker to Rwanda was not *prima facie* unlawful, Rwanda was not an appropriate destination as the Government could not adequately provide guarantees that their human rights would be upheld in Rwanda.

As a result of this, a law is currently being debated in the UK Parliament which seeks to overturn the finding of fact by the UK Supreme Court.

The Law Society of England and Wales is concerned that this legislation undermines the rule of law by seeking to avoid the judiciary's power to deliver evidence-based findings of fact.

We will continue to monitor the situation and voice our opposition to attacks on the rule of law as and when they arise.

### **2.2. Calls to leave the European Convention of Human Rights**

There have been significant calls from some parliamentarians for the UK to leave the European Convention of Human Rights.

The UK government's official position remains that they are committed to membership of the ECHR, although statements have been made by government ministers that indicate a willingness to consider advocating leaving the Convention, should it prove to be an obstacle to realising its plans in relation to asylum issues, including implementing the Illegal Migration Act or the partnership with Rwanda.

The Law Society of England and Wales will continue to monitor the situation and voice our opposition to attacks on the rule of law as and when they arise.

## **3. The Post Office Scandal and professional ethics**

There has recently been a renewed focus on professional ethics within England and Wales, following the broadcast of a television drama focusing on private prosecutions brought by

the Post Office against 736 of its employees, typically for theft and false accounting. These failures were caused by a failure in the accounting software used by the Post Office, called Horizon – a failure that was not disclosed to the defence teams of those being prosecuted. There is currently a Public Inquiry into the failures, which is likely to finish towards the end of 2024.

The Law Society is shocked and saddened by the terrible impact that this scandal has had on so many people's lives. There have undoubtedly been failures in professional ethics by lawyers involved in the case, both those working for the Post Office, and externally. The Law Society of England and Wales is currently monitoring developments in the Inquiry closely and is keeping a 'watching brief' from a press perspective. The evidence from the lawyers will help us in both responding to the findings of the Inquiry, in the short term, but also longer-term, with a view to 'lessons learned' outputs that go beyond the specifics of this scandal and are about professional ethics implications for solicitors.

The issues arising from the Post Office scandal are currently being looked at by the Law Society also as part of our three-year programme of work on ethics, 'Changing Ethical Landscapes.' This work aims to build up our offer to support solicitors to navigate challenging situations in the fast-changing ethical landscape. In the longer term, the programme aims to address some of the reputational challenges facing the profession and reduce the susceptibility to attacks on the profession's approach to ethical issues.

We have held a number of roundtables with members, that have highlighted the different needs that our different member segments have. We know for example that many in-house solicitors experience significant commercial and political pressures, as well as professional isolation. There is a clear need for additional support for in-house lawyers, and we are exploring the best ways to deliver this.

#### **4. Climate Guidance**

The Law Society of England and Wales launched its climate change guidance in April 2023. We believe this to be the first guidance of its kind for the legal profession anywhere in the world.

The guidance has been drafted to provide guidance to the legal profession to understand where the impacts of climate change may affect lawyers' practice and/or their clients and to offer some guidance in terms of appropriate response. Consequently, this guidance covers a range of issues and does so intentionally as the effects of climate change are wide-ranging and constantly evolving. It also recognises that as a result, a solicitor's response will be context-dependent and will vary for practitioners in differing roles, who are to apply the guidance to their own circumstances.

The guidance sets out:

- How organisations can manage their business in a way which is consistent with the transition to net zero. This includes setting net zero targets and decarbonising operations, such as decreasing energy use and travel.
- How solicitors and firms can manage greenwashing, both in the context of any statements their firm has made, and any advice offered to clients.
- How climate change physical risks like impacts to the built/natural environment around us, and climate legal risks like legislative risks brought about by the

introduction of new laws and regulations to support the transition to net zero, may be relevant to client legal advice.

- Issues which may be relevant when considering the interplay of legal advice, climate change and solicitors' professional duties. This includes solicitor's duty of care to the client and competency requirements.
- Issues which may be relevant when considering the solicitor-client relationship in the context of climate change, including considerations when accepting client instruction and client retainer letters.

## **5. Artificial Intelligence (AI)**

Artificial intelligence and other emerging technologies are changing the legal services sector. We are staying up to date this evolving area to fully understand how this will affect the profession.

On Friday 17 November 2023, we published our new two-part guidance on [Generative AI - The Essentials and Lifecycle considerations for SMEs](#).