



## 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 2022 as set out below:

1. Legal Professional Privilege
2. Algorithms in the Justice Sector
3. Brexit and International Trade
4. Access to Justice
5. Diversity & Inclusion

### **1. 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.

### **2. Algorithms in the Justice Sector**

We have published some guidance and further information can be found on the following links:

- Here is comparative research - <https://www.lawsociety.org.uk/topics/research/lawtech-comparative-analysis-of-legal-technology>
- Access to Justice - <https://www.lawsociety.org.uk/topics/research/technology-access-to-justice-and-the-rule-of-law-report>
- Some key lines (in the documents attached to this email) include an overview of UK technology data in legal services; associated benefits of digital transformation for businesses, solicitors, and clients; and justice system, high level policy positions, ethics in LawTech.
- Published the Tech London Advocates (TLA) Blockchain Legal and Regulatory Guidance - <https://www.lawsociety.org.uk/topics/research/blockchain-legal-and-regulatory-guidance-second-edition>



## Digital Law Firms

In terms of overall progress on digitisation our [Financial Benchmarking Survey](#) shows IT expenditure amongst small and medium sized firms was 2.9% as a share of fee income to 2021 and growing steadily. The [PWC law firms survey](#) shows for large law firms IT spend rose from 2.3% to 2.7% on the same measure in 2021.

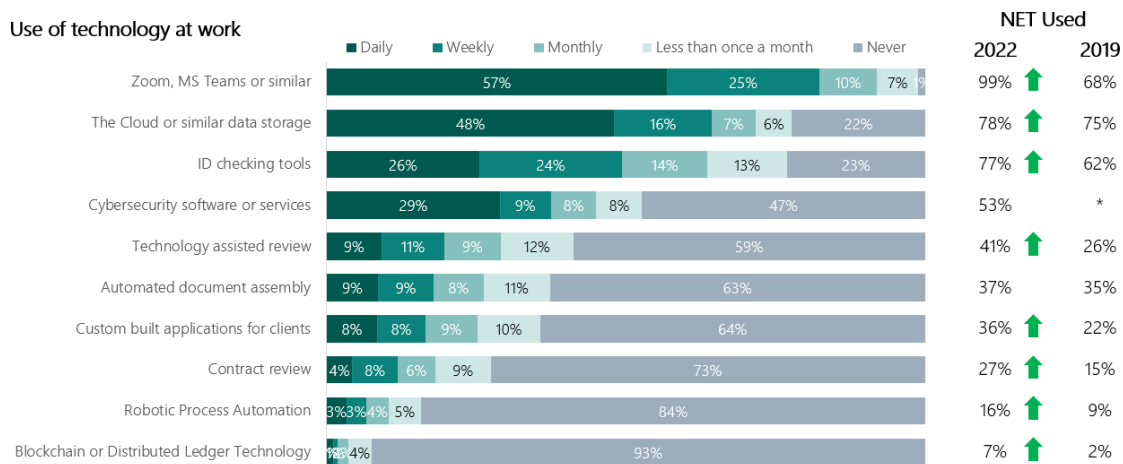
These statistics are still significantly below averages for other sectors – markedly so compared to financial services.

Our PC Holder survey from this year shows how solicitors are working and the types of tools they are using. There has been an increase in the use of various tech tools during the pandemic.

A higher proportion of solicitors are working flexibly post pandemic – in 2019, 58% of solicitors made use of flexible working opportunities, by 2022, this had increased to 86%. A high proportion of both men (84%) and women (89%) were working flexibly post pandemic.

## Virtual meeting platforms are the most commonly used, though cloud storage, AV SW and ID checking tools are also frequently used

Virtually all technologies are now used more often than in 2019, with Zoom seeing the greatest increase



F1. How frequently have you used the following in the context of your working environment in the last 12 months?  
Base: All respondents (excl non-response) – 1,865 to 1,951 depending on question (2022); 1738 (2019) \*Question not asked in 2019



Use of tech will be more appropriate in some practice areas and with some client types than others. Practice areas involving vulnerable clients are likely to require an in-person approach.

## Digitalisation of Justice

Refer to the attachments related to various research from TLS, HMCTS and academic from Cardiff University – for the latter two refer to key points from summaries in Powerpoint presentations attached (from an event with Aberystwyth University earlier this year).

Use of a virtual approach was tested through the lockdowns. We surveyed members involved in will writing in November 2021 (see PDF attached) – whilst the majority of wills practitioners had drafted wills throughout the lockdowns, only a small proportion (14%) used video witnessing. Overall, 73% of practitioners said they would not use video witnessing if it

remained an option. Less experienced cohorts were more likely to indicate an interest in using the technology after the pandemic than their more experienced cohorts. Members were concerned about undue influence, the increased risk of future claims/the reputational risks, the logistics as well as being able to assess capacity of their clients to sign.

During July 2021, we surveyed solicitors with experience of mental health tribunals (further PDF attached) – the majority of those surveyed reported their being sufficient systems / administrative support in place for English Mental Health Tribunals. Representatives praised the flexibility of the platform and the support provided by clients. Connectivity and technology issues identified had lessened over time. The majority (72%) of legal representatives were satisfied that their client had a fair hearing. This was largely due to how the hearings had been managed by the judge and panel members. Although satisfied with the procedural fairness, some representatives considered remote hearings to be a necessity during the pandemic and not a substitute for in-person hearings.

An understanding of the client's perspective – users of the remote court services is lacking. Digital poverty and differences in technical skills are likely to impact on the extent and ease with which users can interact with justice online. Remote translation in courts is an issue.

### **3. Brexit and International Trade**

#### **Brexit / EU-UK cooperation**

- Brexit has brought about new challenges for UK lawyers practising in the EU, and for EU lawyers practising in the UK, as the EU Lawyers Directives no longer apply to the UK. We have been working closely with European bars and law societies, and will continue to work with them, to support lawyers and law firms transitioning to this new reality. We thank our EU counterparts for all the support they have provided to UK lawyers and law firms.
- We welcome the fact that the EU-UK Trade and Cooperation Agreement, which regulates EU-UK relations post-Brexit, 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.
- As freedom of movement between the EU and UK has ended, we are also pushing for more transparency on the new rules which apply to UK and EU citizens travelling on business, as envisaged by the TCA.

#### **Open jurisdiction**

- The Law Society is committed to ensuring that our jurisdiction remains open to EU lawyers and all foreign lawyers who wish to practise here. Lawyers from abroad are, and will continue to be, able to establish practices and firms in England and Wales, partner with solicitors, practise their home country law, international law, EU law and English and Welsh law outside of a small number of reserved activities.
- Foreign lawyers can also requalify as solicitors by sitting the Solicitors Qualifying Examination to gain greater access to the market.

- 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.

#### 4. **Access to Justice**

##### **Court modernisation**

HM Courts and Tribunals Service (HMCTS) is entering the final stages of its court reform programme which is scheduled to run until December 2023. Our overall position on the programme has been that we agree a modernised court service would benefit all users, provided this does not come at the expense of justice. The pandemic did lead to an acceleration of some of the ongoing programme, namely the use of video hearings which we were raising concerns about pre-covid regarding the limited testing. Other aspects of the programme were understandably paused to focus on the court recovery efforts, however HMCTS has informed us that there is no intention to extend the end date despite some projects still waiting to start i.e. possession project.

Due to the fast pace of the programme we have expressed concerns that this does not allow sufficient time for proper testing, evaluation and evidence that technology works and that there is a risk we can slip into digital as the norm without establishing whether there is an impact on outcomes. Our position is that it is vitally important this 'new normal' is not accepted as a permanent way of accessing and upholding justice in the future unless careful monitoring, due process and robust evaluation is carried out. An interim evaluation report of the reform programme is expected to be published before the end of 2022.

We continue to engage regularly at all levels to put forward the views of our members. The National Audit Office (NAO), for example, is undertaking a 'Value for Money' study on the progress of the programme, which we have been directly feeding into including via focus groups covering the criminal, civil and family jurisdictions. The NAO expect to publish the report on the study in February 2023. We have also recently surveyed our members to help identify the key issues regarding the physical infrastructure of the court estate. The results, which are currently being reviewed, will be used for our work in ensuring the court estate is fit for purpose.

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

##### **Race/ethnicity**

Race for Inclusion research, recommendations and updated good practice guidance were published in December 2020. We also published a summary of the Achieving Change Together roundtables held in 2020 on the experiences of black solicitors and recommendations for action to address lower levels of representation in the profession. We have signed up to the 10000 Black Interns campaign, we took interns ourselves in summer 2022, and we are working with the campaign to encourage the biggest 50 firms/biggest in-house legal departments to sign up, if they have not already. We published a podcast for Race Equality Week on mental health and well-being for BAME solicitors – the well-being gap was something highlighted by our Race for Inclusion research.

##### **LGBT+ survey**



We have just launched a survey for LGBT+ solicitors and allies on their experiences within the profession. Any help with promoting it to ensure we get a good response rate would be welcomed. We also have a range of content and a networking event happening during this LGBT+ History Month (February).

### **Disability**

We are continuing to work with the Legally Disabled project. We have just published two 'Easy Wins' documents – one for large firms and one for small firms – which provides a checklist of actions to begin work on disability inclusion.

### **Social mobility**

I. Stephanie Boyce has been appointed to the HM Treasury and BEIS-commissioned City of London Taskforce on socio-economic diversity and inclusion in the professional services. We will be contributing to the supporting working group as well. Our new cohort of Social Mobility Ambassadors have begun work. They come from across England and Wales and have a mix of experience and perspectives. Most of them are already helping with mentoring, outreach events, and responding to 'ask an ambassador' email queries from individuals trying to access the profession. Applications for the Diversity Access Scheme 2023 will open at the start of March. We have amended it to open it up to those taking SQE as well as LPC.

### **Diversity & Inclusion Data**

The research/D&I teams of TLS and SRA met in January to begin collaborating on improving data collection and ensuring more consistent messaging. We agreed to use a similar set of monitoring questions when doing research (SRA shared their refreshed monitoring questions with us). We have agreed to support the SRA's campaign asking individual solicitors to complete their monitoring data on MySRA when it is launched shortly, by raising awareness within the profession about how important good D&I data is.