News round-up

(Covers the period 9 March to 12 April 2022)

The top five

The legal sector continued to react to the crisis in Ukraine. Major law firms, including Freshfields, Linklaters, Allen & Overy, Clifford Chance, Herbert Smith Freehills and Dentons closed their Russian offices. The SRA emphasised that firms should have policies to ensure compliance with sanctions legislation and should regularly check the sanctions lists. The SRA is also visiting firms as part of its rolling programme of inspections to ensure compliance with money laundering regulations. It emerged that the Office of Financial Sanctions Implementation has received 10 applications to work for sanctioned persons but has so far approved none.

The government launched a call for evidence in response to the increase in strategic lawsuits against public participation (SLAPPs) litigation. It comments on possible reforms to address this issue and information about the impact these lawsuits have on individuals. The SRA published guidance on conducting disputes that highlights: the need for solicitors to pursue litigation properly, to ensure that their duties to their clients do not override their public interest obligations and duties to the court, and that behaviours associated with SLAPPs can be evidence of misconduct that should be reported to the SRA. The SRA has begun investigating law firms named in recent Parliamentary debates as being involved in SLAPPs litigation.

The government published its response to the Independent Review of Criminal Legal Aid and accepted the review's arguments for increases to fee schemes. The government proposed a total increase of £135 million per year. Its response included a consultation on other proposals relating to criminal legal aid including the restructuring of existing fee schemes, the creation and role of an advisory board to represent the professions and help shape policy, the role of existing local criminal justice boards, the expansion of the Public Defence Service and how to tackle diversity-based barriers for those working in the criminal defence sector. The legal aid means test's income and capital thresholds would also be raised. Both the Law Society and Criminal Bar Association strongly criticised the proposals as not doing enough to address the shortfall in criminal legal aid funding. Some barristers started direct action by refusing to accept return work.

The government announced a compensation scheme for postmasters who took action in the High Court against the Post Office. Although the Post Office settled the case for £57.75m in 2019, £46m of the settlement went towards paying postmasters' legal fees and the costs of a litigation funder. The Justice for Subpostmasters Alliance welcomed the announcement but said it would need to review the proposal. Postmasters who have had criminal convictions overturned are separately eligible for interim payments of up to £100k.

The SRA has set out plans to reverse the increase in the time it takes to investigate complaints. The overall median time to conclude investigations increased from 280 days in 2019/20 to 320 days in 2020/21, although 93% of complaints it receives still conclude within 12 months. This in turn has led to an increase in the number of cases that are over 12 and 24 months old, which peaked at 742 and 305 days respectively during 2021. The SRA Board identified three reasons for the increase in investigation times: more complex cases; capability and capacity problems; and issues beyond its control. SRA staff have taken action to reduce the number of aged cases. As a result, the number of cases open for more than two years had fallen by 18% to 251 in January, with a target to reduce it to below 100 by November. The SRA has also recruited new investigation officers who begin work this month. The SRA has started a project looking at opportunities to streamline its processes. The SRA has introduced new KPIs for case progression: 93% of complaints to be concluded within 12 months, 95% within 18 months, and 98% within 24 months.

Political developments affecting the justice sector

The Economic Crime (Transparency and Enforcement) Act received Royal Assent. Under the new law the government can impose sanctions more quickly and more aggressively enforce them. The Act provides for a new Register of Overseas Entities, run by Companies House in cooperation with the land registries, which will require beneficial owners of companies that own UK property to reveal their identities or face restrictions on their ability to sell, as well as fines and imprisonment for non-compliance. The Act also seeks to make unexplained wealth orders more effective against UK property held under complex ownership structures.

The House of Lords voted to remove ‘prospective-only’ quashing orders and the presumption in favour of ‘new remedies’ for judges from the Judicial Review and Courts Bill and passed an amendment limiting the abolition of the *Cart* jurisdiction. The Bill will return to the Commons for the next stage of its passage.

The Public Accounts Committee published its report on reducing the backlog in criminal courts. It considered that the government’s measures to reduce the Crown Court’s current backlog of by less than 8,000 cases were unlikely to address delays to justice for victims, witnesses and defendants. The Committee also made findings about the impact of delays on victims of serious sexual offences, how vulnerable users and people from ethnic minority backgrounds could be disproportionately impacted by efforts to tackle the backlog, the government’s recruitment of judges to address the backlog, the ability of the prison system to cope with an increase in prisoners, and how the government will use data to improve the system’s performance.

The House of Lords Justice and Home Affairs Committee published a report entitled ‘Technology rules? The advent of new technologies in the justice

system' recommending the creation of a new national body to regulate the use of artificial intelligence in the justice system and public sector. The report said that without sufficient safeguards the use of advanced technologies could undermine human rights and the rule of law. Other recommendations included the creation of a register of algorithms used by the public sector, that the government continues work on the national data ethics governance body and that it should help develop local specialist ethics committees to scrutinise police forces' use of new technologies.

The government published a report summarising the responses of its call for evidence on dispute resolution in England & Wales, which will inform its work on how dispute resolution processes can improve access to justice. The report highlighted a lack of awareness about dispute resolution services and a perception that they were merely a hurdle on the way to court. The cost of dispute resolution processes could also be a barrier. There was also a perception that lawyers preferred their clients to pursue litigation instead of dispute resolution, and that the language lawyers used could exacerbate tensions between parties.

Ahead of the 'no-fault divorce law' coming into force on 6 April, the government said that it would look 'within a matter of weeks' at further measures relating to provision for separating spouses' future financial needs after the no-fault system comes into force. While the new no-fault system is expected to be quicker, the divorce application fee will remain unchanged at £593.

Covid-19 and related issues

Parliament's Public Administration and Constitutional Affairs Committee's report on the Coronavirus Act 2020 criticised aspects of the process by which the Act was passed, including the provision of only three days of parliamentary sitting time and the 'take it or leave it' nature of the six-monthly votes for its renewal, which meant MPs could not object to specific aspects. The Committee also said the government should not have issued guidance for Covid-19 restrictions which overruled legislation as this avoided parliamentary scrutiny and confused the public and law enforcement officials. The Committee urged the government to look at introducing draft legislation for handling emergencies so that it could be properly scrutinised before one occurs. It also asked that the upcoming public inquiry assess the necessity and proportionality of the powers in the 2020 Act.

The Judicial College will provide training on new powers for magistrates allowing them to hand down 12-month prison sentences. These changes were announced by the government in January as part of its efforts to reduce the current backlog in the Crown Court. The government had also previously announced plans to recruit 4,000 new magistrates.

Regulatory and wider policy developments

An interim report from the SRA on online self-help tools developed to improve access to justice has found issues about trust in them and their visibility. It also noted that the switch to online advice services had reduced access to services for some people. The SRA would run a series of justice innovation challenges during 2022 to identify how innovation could improve access to legal advice. It has also commissioned research on gaps in legal provision in England and Wales.

The SRA proposed reintroducing an annual application process and fee to stay on the roll of solicitors. If implemented the process would come into effect in April 2023 with an annual fee of between £30 and £40. The SRA's main reasons for reintroducing the process are compliance with GDPR and improvements in its IT systems. Some solicitors without practising certificates, eg those working for government agencies, would be exempt.

As part of its work on diversity, the SRA's Board discussed encouraging large law firms to start voluntarily reporting their ethnicity pay gap. The regulator said it would work with the firms and the City of London Law Society on this. The SRA will consider publishing its own data this year and would work with the Law Society to encourage consistent reporting on pay gaps by larger firms. The SRA also intends to ask a sample of solicitors leaving the profession whether diversity issues were a factor in their doing so.

The SRA's Compensation Fund paid out £27m to victims of dishonest solicitors in the year to 31 October 2021, an increase of 162% on the previous year. The SRA said that the fund maintains significant reserves to provide for uncertainty and had £48.9m in cash in October 2021, which had increased to £50.9m in February 2022. As of 31 October 2021, the fund had 537 open claims worth £75m, both lower figures than 12 months earlier. Most claims are not accepted, or not paid out at the amount claimed.

The SRA ended proceedings against the junior solicitor initially struck off after she left confidential documents on a train. Claire Matthews can continue to work in the profession, albeit with conditions on her practising certificate, after the SRA decided that a rehearing of the case against her before the SDT was not in the public interest. Her case shone a spotlight on the treatment of young lawyers and mental health problems by the SRA and SDT.

The BSB published its strategy for the next three years and its 2022/23 business plan. The BSB's strategy sets out five key aims: efficiency, standards, equality, access and independence. Its business plan also reflects these aims.

The BSB's Board decided to drop the Bar Course Aptitude Test (BCAT) as it considers it no longer effectively assesses whether prospective barristers are likely to fail the vocational part of their training. The BSB considered that the training providers' admissions processes were proving more effective than the BCAT. The

BSB would continue to work to ensure providers' admissions processes were appropriate. This decision followed a consultation by the BSB during which the Bar Council and Inns of Court had registered their opposition to the test's withdrawal. The BSB will need to seek the LSB's approval for the change.

CILEX published the results of its first Professional Qualification assessments (CPQ) with 61% of students passing the first stage. More than 230 students took the assessments in January which make up the first part of the CPQ's foundation stage. The foundation stage is the entry route to the profession for people with no legal background. These students will now move on to complete the foundation stage and qualify as CILEX paralegals.

CILEx Regulation is consulting on altering its enforcement rules to create a permanent presumption of holding disciplinary proceedings remotely, unless circumstances would make it unfair to do so.

CILEx Regulation announced the appointment of Simon Blandy as its new Director of Governance. Simon previously served as the CLC's Director of Regulatory Standards.

The Association of Costs Lawyers asked its members to respond to a survey as part of its review of the cost lawyers' qualification. The survey covers aspects of qualification design, such as exemptions, cost and duration. It follows the CLSB's publication of its new Costs Lawyer Competency Statement.

Jack Ridgway became the new Chair of the Association of Costs Lawyers. Mr Ridgway said he would be focusing on modernisation, engagement and representation, putting in place administrative changes to turn the ACL into a 21st century organisation. Around 35% of costs lawyers are not ACL members, and the ACL needed to demonstrate the value of membership. Increased membership would mean more funds enabling the ACL to do more.

The Legal Ombudsman's Chief Executive said that there is a 'underlying core of dissatisfaction with legal service provision' that is not 'changing or being sufficiently addressed'. The type of complaints LeO received had remained consistent with delay and failure to advise being the most common along with poor communication, costs and failure to follow instructions. As for areas of practice, the most complaints were about conveyancing. Poor service was a factor in 55% of complaints.

Lawtech UK and the Regulatory Response Unit issued a joint statement on the use of digital identity technology in the legal sector noting that legal services regulation does not prohibit the use of digital ID verification, addressing misconceptions about this technology and highlighting its benefits.

Following its review of the process for appointing judges, the Judicial Appointments Commission will adopt a revised approach to its statutory consultation process from September, including dispensing with it where its use may risk perceived unfairness and lack of consistency. There was no direct evidence the process had disproportionately impacted appointments of persons with protected characteristics or because of their professional backgrounds.

Seema Kennedy, chair of Levelling Up Law, a collaborative project of the City of London Law Society and the Social Mobility Pledge, said that City law firms taking part in the Levelling Up Law initiative still needed to agree a common approach to measuring social mobility in their recruitment processes. Standardising data collection on socio-economic disadvantage was one of three recommendations in the project's action plan. The other two were for member law firms to work with13 non-Russell Group universities on placement and recruitment and that member firms should advocate social mobility and diversity.

Market developments

Amicable, an online service for separating couples who draft their own documents without lawyers, has secured another £1.2m in funding, which it intends to use to improve its app and customer dashboard as well as recruit more staff. It anticipates that the introduction of no-fault divorce will increase demand for its services.

A standardised form for solicitors to assess the cyber-security arrangements of chambers they instruct has been launched by the Law Society and Bar Council. The form is designed to ascertain what central IT systems chambers provide to barristers and contains further questions on issues relating to chambers' management of IT security and risks. It does not cover barristers' own devices or IT services they obtain themselves. The initiative intends to improve communications between law firms and chambers on IT security and improve data protection.

Partners from Clyde & Co and BLM will vote on a potential merger. The merger, which would be one of the biggest ever in the UK legal sector, would create a firm with an annual turnover of around £733m.

Market Intelligence and research

Growing reluctance to report ethnicity to the regulator could harm monitoring of the diversity of solicitors. The Law Society's 2020 Annual Statistics Report shows a solicitors' profession which is majority female (52% of practising certificate holders) and with a higher proportion of people from a minority ethnic background than the general population in the country (except in the Northeast of England). Two-thirds of newly qualified solicitors are women. The higher ranks of the profession remain disproportionately white and male. The overall percentage of practising certificate holders from a BAME background has fallen. This is suspected to be due to an increase in non-reporting of ethnicity as the number of solicitors reported as having ‘unknown ethnic origins’ had increased by 5,000 to 35,000 from the previous year. Most newly admitted solicitors are not providing their ethnic origin to MySRA. Trainees were also reluctant to state their gender. The report also noted that more than 40% of all solicitors practise in Greater London.

One in five London trainees are paid less than the recommended minimum but situation for trainees outside London has improved. Research by Douglas Scott Legal Recruitment said that 20% of trainee solicitors in London are being paid less that the Law Society’s suggested minimum salary of £22,794 despite wage inflation in the legal sector. The proportion of trainees in London paid below the suggested salary was the same as in 2021. Trainees in London were paid £34,930 (an increase from £32,190 the previous year). During the same period, trainees’ average salary outside London increased from £23,300 to £26,336. The Law Society should publish revised recommended minimum salary rates in the summer.

The number of training contracts on offer in England and Wales fell by just over 11% in the first year of the pandemic. The Law Society’s Annual Statistics Report 2020 showed that 5,626 trainees started on their two-year training contracts in 2019-20, an 11.3% decrease on the year before. In 2018-19, training contract numbers increased from 5,811 to 6,344, the highest they had been since the 2008 financial crash.

The Bar Council’s second annual survey of pupils has found that nearly four in ten pupils have experienced or witnessed bullying at the Bar. However, the survey found that only 19% of pupils had experienced bullying as opposed to 30% of the overall Bar. 89% of pupils surveyed reported a positive or very positive experience of pupillage, with 90% happy with their supervision. 61% of pupils said a career at the Bar was viable, while 33% said it was somewhat viable. The main reasons why pupils considered a career at the Bar was not viable were work/life balance (44%) and insufficient remuneration (29%). The same survey also found that pupils found the pupillage application process challenging and it could be improved with better feedback, including chambers responding to applications.

Initial research by the International Bar Association on gender equality at senior levels of the legal profession in England & Wales found that overall women make up 51% of the legal profession, but only occupy 32% of senior roles. The highest percentage, 64%, of women lawyers is in the public sector where they hold 57% of senior roles. Women make up 59% of in-house teams. The percentage in law firms is closer to the overall figure with women making up 50% of lawyers in law firms but only 31% holding senior roles. Barristers’ chambers have the lowest percentage of women lawyers overall at 32%, while women make up 43% of the judiciary and hold 26% of senior positions. Flexible working was the most popular gender-parity initiative and considered ‘very effective’. Unconscious bias training, while popular, was considered the least effective.