

News round-up

(Covers the period 13 January to 8 March 2022)

The top five

In the wake of the Russian invasion of Ukraine, the SRA reminded law firms of the importance of their role in ensuring all sanctions imposed on Russia by the UK government are complied with. The Economic Crime Bill was introduced in Parliament on an accelerated timetable as part of a drive to tackle 'dirty money'. It seeks to reduce corporate anonymity and give teeth to the enforcement of unexplained wealth orders. Pressure to act against law firms who act for oligarchs and companies connected with the Russian state increased. The Law Society defended the role of law firms in representing Russian clients on rule of law, grounds, although some city firms have severed ties with Russian clients.

53% of candidates passed the first SQE assessment but there was an attainment gap on ethnicity. 65% of white candidates passed compared to 44% of BAME groups. There were no significant differences on gender, disability, school type or social background. The overall pass mark compares to 58% over the history of the Legal Practice Course. Candidate performance on the functioning legal knowledge aspect of the assessment was better than the practical legal skills and knowledge element. The SRA's independent reviewer said: "Overall, the initial SQE1 exam appears to have successfully delivered valid fair, reliable and defensible outcomes." Meanwhile it emerged that students due to take the first part of the SQE1 in July will not have results in time to sit the second part, SQE2, in October.

The SRA is consulting on proposed additions to the codes of conduct relating to workplace culture. These include an explicit obligation on both individuals and firms to treat colleagues fairly and with respect, and not to bully, harass or unfairly discriminate against them; and requiring firms and individuals to challenge behaviour which does not meet this standard. The SRA stated it would have clear powers to act where solicitors' fitness to practise is in question due to health issues. The consultation followed publication of a thematic review and guidance on workplace culture warning law firms that imposing "wholly unreasonable workloads or targets" on staff could result in disciplinary action.

BSB analysis of data on barristers' income by gender and ethnicity showed the same overall patterns as when it was first published two years ago, with women earning less than men, and those from minority ethnic backgrounds less than White barristers. This is by every measure: self-employed, employed, QCs, whether inside and outside London, similar years of call and areas of practice. The BSB said the disparities could not be explained away by seniority, geography or area of law practised. Intersectionality meant that female barristers from minority ethnic backgrounds were the lowest-earning group, with average incomes 41% of those of the highest, White male barristers.

A group of MPs called for urgent action against strategic litigation against public participation (SLAPPs) including a windfall tax on libel law firms. The debate was called by David Davis MP who condemned wealthy litigants' use of "lawfare", while another MP described parts of the legal profession as a "cancer on the body politic". Meanwhile, the SRA updated existing guidance on conduct in disputes reminding solicitors witnessing behaviour bearing the hallmarks of SLAPP of obligations to report it to them. It said features of such cases may include 'excessive or meritless claims, aggressive and intimidating threats' or 'otherwise acting in a way which fails to meet the wider public interest principles'.

Political developments affecting the justice sector

A solicitor, Christine Lee, was named in an ‘interference alert’ from MI5 as an alleged Chinese agent said to ‘be involved in political interference activities in the UK. She was accused of covertly facilitating donations to serving and aspiring parliamentarians on behalf of foreign nationals in Hong Kong and China. Lee was admitted as a solicitor in England and Wales in February 2002 and her law firm, Christine Lee & Co Solicitors, is also regulated by the SRA. The firm’s website claims it is the first and only UK Chinese law firm authorised by the Chinese Ministry of Justice as a foreign law firm to operate in China. The SRA said it was gathering information about the matter.

The Government published its response to the consultation on reforming the framework for better regulation. Measures include “reviewing the powers and duties of regulators to ensure they are best able to serve the Government’s priorities and encourage collaboration between the regulators and the regulated to improve the implementation and enforcement of regulations.” Further: adopting a greater emphasis on proportionality, to ensure that we regulate in a way that focuses on co-creation allowing businesses to grow, while giving greater flexibility to try innovative new approaches; ensuring that we are making the best use of alternatives to regulation by introducing an earlier scrutiny point at which government departments will be asked to justify their decision to pursue regulatory options; improving how we evaluate regulation, including post-implementation reviews; and improving how we measure the overall impact of regulation, including consideration of a more holistic approach and the removal of the Business Impact Target in its current form.

The Government is consulting on revisions to the Human Rights Act. It wishes to replace the Act with a Bill of Rights, in order to restore what it says is “a proper balance between the rights of individuals, personal responsibility and the wider public interest”.

The Government set out plans to use Brexit to become a global hub for legal services. In a document called “The benefits of Brexit: how the UK is taking advantage of leaving the EU,” the Government argued that new freedoms under Brexit will allow the UK to become a global centre for dispute resolution. The Government is aiming to sign deals with other countries to ensure British lawyers can practice in other countries, such as Australia. Further, the Government plans to develop the UK’s mediation sector and will consult on the UK becoming a party to the Singapore Convention on Mediation.

The Department of Health & Social Care published proposals for fixed recoverable costs for fast-track clinical negligence cases worth up to £25,000. It chose to set the fees at levels recommended by defendant representatives, rather than higher ones proposed by the claimant side. The government says that in 2020/21, claimant legal costs in the £1,001 to £25,000 bracket were more than twice the average amount awarded in damages, a gap that has also steadily widened over the years. Further, claims in that category took an average of 1.3 years from notification to settlement – an increase of 46% since 2010/11. Campaigners said access to justice would suffer since lawyers would not be able to properly pursue cases and that government should focus on tackling the root causes of problems.

The Ministry of Justice is to transfer 2,000 desk-based roles out of London over the next eight years as part of the Government’s so-called ‘levelling up’ agenda. New offices will be in Leeds, Liverpool, Nottingham, South Tyneside, Cardiff, Ipswich and Brighton.

Covid-19

The Lord Chancellor doubled the maximum prison sentence – currently six months – that magistrates can hand down to cut the Crown court backlog. Magistrates will also increasingly be allowed to sentence serious cases such as fraud, theft and assault. Meanwhile, the government is to recruit 4,000 new magistrates, in a bid to make magistrates courts more representative and cut the court backlog. The Ministry of Justice said its plan to launch the largest recruitment drive in the Magistrates Courts' 650-year long history could see the total number of magistrates increase by a third in coming years.

A grant scheme which funds early advice services for litigants in person based on a partnership between the Ministry of Justice and the Access to Justice Foundation, helped over 10,000 people in its first year. Around six in 10 resolved their matters with advice funded by the Legal Support for Litigants in Person (LSLIP) programme. Part of the MoJ's 2019 legal support action plan, the LSLIP was launched in April 2020 to back early intervention services for LIPs across England and Wales for just over two years.

Almost half of the temporary Nightingale Courts set up at the start of the pandemic are to close. Eleven centres will close within weeks, but another 12 in England and Wales will stay open for one more year to focus on reducing waiting times for criminal trials.

Regulatory and wider policy developments

Baroness Tessa Blackstone announced that she will be stepping down as Chair of the BSB in the summer. The BSB will be advertising for her successor in due course.

Lisa Mayhew and Nicola Williams were appointed to the SRA Board. Ms Mayhew is Co-Chair of Bryan Cave Leighton Paisner and Ms Williams is Legal and Compliance Director and Company Secretary of Welsh Water.

The SRA has outlined its concerns that clients “are not receiving appropriate advice” on onerous clauses in leases, particularly around ground rents. It has spelt out the obligations on them in a guidance note, saying that the duty to provide competent advice is not discharged solely by describing the “current” rent charges, referring to the wording as being a “standard clause” or telling clients to read the lease.

The CLC launched a consultation on possible changes to PII cover for conveyancers and probate lawyers. Issues discussed include integrated run-off provided by the minimum terms and conditions (MTC), the approach to excesses set by insurers and whether standalone cyber insurance should be mandatory. A further change would move the CLC closer to the position of the SRA by requiring insurers to provide an automatic 60-day extension of indemnity cover when a firm fails to renew at the end of the insurance year. The CLC wants the changes to be in place in time for the June 2022 renewal round.

CILEx Regulation launched its first ever Equality, Diversity and Inclusion strategy, championing fair access for all in the legal services market and setting out a series of clear measurable commitments for 2022-24. A major focus of the strategy is on improving the ability of aspiring lawyers to enter and progress in the legal profession, based on merit and regardless of their circumstances or diverse characteristics. The strategy also looks to improve access for all who use legal services.

Members of the Criminal Bar Association voted overwhelmingly to take direct action in April if the government fails to substantially increase legal aid funding by the end of March. The Lord Chancellor warned that strike action would hold back recovery in the court system.

The Court of Appeal upheld a ruling that a barrister who sat as a tribunal chair for the Nursing and Midwifery Council was a 'worker' and entitled to sickness and holiday pay. The ruling could lead to similar claims across professional tribunals, including the Solicitors Disciplinary Tribunal and Bar Tribunals and Adjudication Service.

LawtechUK published a Legal Data Vision. This was developed in collaboration with the Open Data Institute and offers a shared aim for the legal sector to prioritise the responsible use of and access to legal data to drive innovation, uphold trust and deliver outcomes that benefit society. The Vision includes a range of information, including examples of how data can be harnessed in the legal sector, and a framework that sets out how those in the legal sector can contribute in their own way to achieving the Vision.

The Civil Justice Council recommended that alternative dispute resolution should be compulsory for claims worth less than £500 excluding personal injury and housing disrepair. It said that if claimants refused to mediate, claims should be stayed for a period and then struck out. If defendants refused, costs sanctions could apply.

Lord Edward Garnier QC is to review the regulation of legal services in the Isle of Man. Potential areas identified as needing investigation included access to the profession by those who wish to practice, ongoing training and development, complaints, the disciplinary process and the Isle of Man Law Society's dual representation and regulation roles.

The Industry Working Group on Electronic Execution of Documents published an interim report. It said the most sophisticated kind of electronic signatures can be "more reliable" than signatures witnessed the traditional way in an "unsupervised environment and called on the government to ensure that "as many official documents as possible" can be executed electronically, though it failed to agree on whether signature platforms should be accredited. The group was convened following a recommendation by the Law Commission.

A network was to support class representatives pursuing cases on behalf of huge numbers of consumers who have lost money due to the anti-competitive behaviour of companies. It is chaired by Walter Merricks, the class representative in the £14bn collective action against Mastercard on behalf of around 46 million consumers.

Market developments

Slater and Gordon halved its fixed divorce fee ahead of the no-fault divorce reforms on 6 April. Its petitioner fixed fee divorce now costs £540 plus the court fee.

Legal consultancy, technology and outsourcing firm Elevate became the second company to have an ABS licence in both England and Wales and the US after it was licensed in Arizona. Elevate, which describes itself as a 'law company' and is majority owned by non-lawyers, follows in the footsteps of LegalZoom, which was licensed last October.

Legal Utopia revealed expansion plans following a round of investment. It provides an app for SMEs and individuals which uses artificial intelligence to help diagnose and solve legal problems. Its plans include new products, such as litigation funding, providing office space, and expanding beyond legal to complementary services, for example accountancy.

Mishcon de Reya postponed plans to float on the London stock exchange. The firm still believes there is a clear rationale for an initial public offering, but the market is considered too volatile to convert the business at this stage.

Market intelligence and research

The SRA said its latest biennial diversity report showed “real challenges” for large firms in making progress towards diversity. The largest firms (50+ partners) have the lowest proportions of female partners, ethnic minority lawyers and disabled lawyers, when compared to other firms, and the highest proportion of lawyers who went to fee-paying schools. Overall, the latest figures show little improvement. The overall proportion of BAME lawyers working in law firms rose by half a percentage point to 17% while just 5% of lawyers said they had a disability (up from 4% in 2019), compared to 14% of the working population. On gender diversity, women make up 52% of lawyers, but only represent 35% of partners.

The BSB’s annual diversity report showed numbers of pupil barristers rebounding after the pandemic, while women increasingly dominate the junior end of the Bar. The overall number of practitioners at the Bar, including pupils, stood at 17,774, of whom 1,928 were QCs. This was an overall increase of 342, in line with pre-Covid growth. As an annual snapshot, demographic changes look small, but the proportion of women at the Bar has increased 0.6 percentage points over the year. The percentage of barristers from minority ethnic backgrounds has increased 0.5pp to 14.7%, in line with the wider population; they make up 9.6% of QCs and nearly one in five pupils. The evidence of an ageing Bar is clear: while in 2015 14.8% of barristers were 55+, the figure is now 22.4%. Though the proportion of UK-schooled barristers who attended an independent school is still hugely out of kilter with the 7% in the wider population, the BSB noted that it has been “gradually trending downwards”, from 39.6% in 2015 to 36.9% in 2021.

Bar Council research found one in six young barristers say they want to leave the bar over unmanageable or unpredictable working hours. The potential health consequences of remaining at the bar was one of the key issues cited by barristers practising for less than seven years and are considering quitting, with the report recommending that ‘work allocation needs to be fairer and workloads need to be more manageable’. Only half of barristers felt work was allocated fairly, with many juniors finding it difficult to turn down work for fear of the potential consequences in relation to future income and career progression.

Fewer lawyers sought support from legal mental health charity LawCare in 2021, although those experiencing stress rose by 24%. LawCare was contacted by 667 legal professionals in 2021, down by nearly 10% from 738 the previous year. The most common problem cited was stress, affecting 33% of all those contacting the charity. Other issues regularly cited by those who sought support included anxiety (13%), depression (10%), bullying (8%) and career development (8%). Most lawyers contacting LawCare were women, while 63% were trainees and pupils or had been qualified for less than five years.

UCAS figures show 69% of law applicants in 2021 were women. The number of female applicants across all law-related courses has been steadily increasing for years. Comparing the data to a decade ago, male applications have only risen by about 2%, compared to a 41% jump in female applications. Law courses made up 9% of all applications submitted to UCAS in 2021, with almost one in ten applicants applying for law-related courses.

The SRA commissioned research into the impact of gaps in access to justice on different groups of consumers. Led by Bayes Business School of City University London, the study will initially seek to identify different groups, or segments, of consumers based on their individual needs and behaviours when a legal issue arises. The research will also look for where gaps in provision currently exist and which consumers are most adversely affected, as well as testing policy interventions which could potentially address these gaps.

Government figures showed the number of motor claims fell dramatically in 2021.

Motor injury claims reported to the Compensation Recovery Unit fell by almost 20%. In the same year the Civil Liability Act came into force, reducing the damages available to successful claimants and requiring them to use a new portal, Official Injury Claim, for all claims worth less than £5,000. ACSO said the government had succeeded through the portal and new tariff levels in placing motor injury claims in a 'state of permanent lockdown'. Further, that falling claims numbers were not reflected by any reduction in motorists' car insurance premiums, although the ABI disputed this.

Analysis by IRN found the **value of the wills, trusts and probate market topped £2bn for the first time last year**, with contentious work on the rise. IRN said the number of firms offering advice for contentious wills, probate and trusts has more than doubled since 2018 to 646. There was also growing demand for related services, such as funeral planning, future care planning, and bereavement services. In 2020, probate applications from individuals represented over 40% of all applications for the first time rather than professional advisors. 52% of people with a will used a solicitor to draft it, down from 56% the previous year, while the proportion who drafted their own rose to 12%. Another 19% used a specialist will writer.