News round-up

(Covers the period 8 September to 12 October 2021)

The top five

In a Cabinet reshuffle, the Rt Hon Dominic Raab MP was appointed Deputy Prime Minister, Lord Chancellor, and Secretary of State for Justice. Earlier, Suella Braverman QC MP was reappointed as Attorney General returning from maternity leave. Alex Chalk, formerly minister of state, became Solicitor General. Victoria Atkins became a minister of state, while James Cartlidge and Thomas Pursglove were appointed parliamentary under secretaries of state for justice. Lord Wolfson remained in his position.

Bar Council research found nearly one in three barristers have personal experience of bullying, harassment and/or discrimination (BHD) in the past two years. Barristers and judges were the most frequently cited sources of bullying. The figure of 30% experiencing BHD compared to 21% in the 2017 wave of the Barristers Working Lives Survey and 13% in 2013. Female barristers from non-White backgrounds were four times as likely to face BHD as White male barristers (58% v 15%). When asked what the BHD related to, gender was the most common response (43%), while race and age were also frequently mentioned (20% each). These were followed by social class (12%) and sexual harassment (10%).

A membership survey by CILEX found that **legal executives face discrimination and unfair treatment by fellow professionals and particularly their employers**. CILEX said the fact its members – many of whom come from non-traditional backgrounds – faced discrimination and a lack of respect despite their qualifications and experience "denies them the equality of opportunity that is at the heart of the government's 'Levelling up' agenda". A common sentiment was that CILEX lawyers are considered 'lesser lawyers' than solicitors. It called on the other legal representative and regulatory bodies to join a summit to discuss how to tackle the "crisis of culture" in the profession, in the wake of other research showing widespread problems with mental health, discrimination, bullying and harassment.

OPBAS published its latest report on progress made in tackling money laundering by professional body supervisors (PBSs) over the past year. It found that the PBSs have improved in recent years to achieve a level of compliance with the technical requirements of the Money Laundering Regulations. However, OPBAS continued to find differing levels of achievement and some significant weaknesses.

The Scottish Government is consulting on reforms to legal services regulation. Three potential models are proposed: all legal professionals regulated by a new independent body accountable to the Scottish Parliament; a 'market' regulator accountable to the Scottish Parliament, overseeing independent regulators of the different parts of the profession; and "enhanced accountability and transparency" where each professional body would have an independent regulatory arm accountable to the Scottish Parliament or the Lord President. Other proposals focus on entity regulation, statutory protection for the title of 'lawyer', adding legal tech to a statutory definition of 'legal services' and reforms to facilitate alternative business structures. A law passed in 2010 allowed ABSs with a majority lawyer ownership but has never been brought into force. There is a view that the 2010 legislation is unworkable, so the consultation includes new proposals to remove the majority lawyer ownership restriction. The consultation also seeks views on reforms to consumer redress.

Political developments affecting the justice sector

Mick Antoniw, the Wales counsel general, reiterated the devolved government's call for control of the legal system to switch from Westminster to Cardiff. He accused the Westminster government of playing a 'political trick' by refusing to meet what he claimed to be the Welsh people's wishes for a devolved justice system. Lord Wolfson said the UK government is looking seriously at the Thomas report on devolving justice in Wales, but indicated that it remained opposed to a separate jurisdiction.

Shadow justice secretary David Lammy pledged that a Labour government would support the creation of an independent body to assess legal aid rates. Speaking at the Labour Party conference, he criticised the Conservative government for attacks on elements of the legal profession. He also pledged a state-run national pro bono centre alongside pro bono targets for City firms to meet if they want government contracts. Ellie Reeves, the shadow solicitor-general, warned that publicly funded side of the legal profession is "losing a talent pool of bright, young lawyers" to big City law firms because of the cost of qualifying.

HM Treasury consulted on legislation to raise money to fight economic crime. The levy would be paid by all groups that are subject to UK money laundering regulations, including legal practices, banks and accountancy firms. The Government decided that small firms should be exempt from paying the levy despite SRA arguing a contrary position. Entities with over £10.2m in UK revenue will be liable to pay the levy, which will first be collected in 2023/24. Companies will pay the levy as a fixed fee based on the 'size' band they belong to rising to £250,000 on very large companies, such as City law firms**.**

The Government published the UK's first ever National AI Strategy. There are plans to launch a new national programme and approach to support R&D, publish a white paper on the governance and regulation of AI to build confidence in its use, plus moves to support organisations in every region and sector capitalise on the power of AI technologies.

The government announced that the entire corpus of EU law which entered the UK statute book via the European Union (Withdrawal) Act of 2018 is to be reviewed. Acknowledging this would be a 'mammoth task', Lord Frost said that the government is looking at developing a tailored mechanism for accelerating the process.

Covid-19

Statistics show 60,692 outstanding cases in the Crown court at the end of June, up from 59,942 between January to March. The backlog has steadily been rising since early 2019, when it stood at 33,290. Experimental statistics show cases are outstanding for longer. While the backlog is a record high, it is increasing at a much slower rate than recently.

Regulatory and wider policy developments

Paul Tennant is to depart as CEO of the Law Society. He will take up a new role as chief executive of national charity the Abbeyfield Society.

The SRA is to reduce the size of its board to nine members. Three solicitor members and one lay member are due to leave their posts in the next year and the SRA has decided to replace them with only two solicitor members, recruitment for which has begun.

The SRA said it wants to see documents released as part of the Pandora papers to establish whether any law firm has breached anti-money laundering rules. Several law firms have been named as part of the ongoing coverage from leaked files of companies that specialise in creating offshore companies and trusts. The SRA requires firms to carry out proper checks on clients before taking them on. There is no suggestion that any firm named in the Pandora papers is in breach of these rules, but the SRA wants to see details of what information has been released to check if it needs to be involved.

More than 10% of law firms whose compliance with anti-money laundering rules was checked by the SRA in the last year have been referred for investigation. SRA's AML team is dealing with 200 investigations, which range from straightforward non-cooperation by firms up to highly complex investigations relating to international frauds or terrorist financing.

Nearly 1,200 people have signed up to take the first ever Solicitors Qualifying Examination (SQE) assessment in November. There are now 12 training providers offering specific SQE training. Three-quarters of bookings were from candidates taking the assessment in the UK with the remaining candidates are spread across 47 other countries. One in 12 candidates has requested reasonable adjustments. The SRA said that, with a "range of law firms" having already committed to taking on SQE trainees, with many starting next year, it expected candidate numbers to rise significantly.

The Sole Practitioners Group suggested solicitors should be asked to 'top up' their practising certificate fee every year to maintain the Solicitors Indemnity Fund. It said an extra £10 a year from each lawyer could sustain the SIF, which provides post six-year run-off cover for firms that close without a successor practice. The fund is scheduled to close in September 2022 and the SRA is expected to consult on what to do next.

CLSB and SRA received grants from the Regulators Pioneer Fund. CLSB received £58k for research based on the types of services that lawyers specialising in costs are providing or might provide in the future. It will explore whether, if regulation or legislation were different, costs lawyers could bring about downward pressure on the cost of legal services. The SRA received £168k for a project on using lawtech to address regional inequalities in access to justice. The project aims to create a new network where regulators, expert research institutions and local government can work together to help overcome some of the barriers associated with accessing expert legal help.

Campaigners called for legislative and regulatory change to make non-disclosure agreements (NDAs) unenforceable for anything other than their original purpose – the prevention of sharing confidential business information and trade secrets. Academic Julie Macfarlane praised the SRA for being "the first regulator in the world" to issue guidance and warning notices on NDAs but said the problem was that "guidance has no teeth". While she said "efforts had been made" to use the SRA guidance to bring complaints against lawyers it was "very difficult to get traction" without it forming part of the code of conduct. She has reached the conclusion that legislation, rather than regulation, is the best approach. Meanwhile, Maria Miller MP, who chaired the women and equalities select committee investigation that considered the use of NDAs in the workplace and the role of lawyers, introduced a 10-minute rule bill into the Commons to coincide with the campaign launch.

BTAS stood by significantly tougher penalties for sexual misconduct, saying that a respondent's personal circumstances, health and good character should be 'treated with caution' in such cases. Introducing its second and final consultation on barrister sanctions, BTAS maintained that penalties for sexual misconduct should start at a suspension of more than 12 months and finish at disbarment.

Law Society published guidance in partnership with Cardiff University encouraging firms to improve the way they recruit and retain disabled solicitors. The guidance focuses on reasonable adjustments for employers to improve treatment of disabled staff.

The inquiry into the Post Office Horizon scandal was urged to put more focus on the role of lawyers in perpetuating the organisation's intransigence over the IT system's problems. The Evidence-based Justice Lab at Exeter University said the provisional list of issues published by the inquiry failed to consider the civil claim brought by sub-postmasters against the Post Office, known as the Bates litigation. The inquiry, led by Sir Wyn Williams, has been tasked with establishing a clear account of the implementation and failings of the Horizon IT computer system over its lifetime. There are only two questions out of the 184 in the provisional list of issues that relate to legal advice taken by the Post Office.

Fieldfisher was criticised over the advice it gave the Royal Institution of Chartered Surveyors during a governance crisis. Alison Levitt QC was commissioned to conduct an independent review over allegations that RICS had tried to suppress a critical internal report into its finances and then unfairly dealt with four non-executive members of its management board who sought to explore the issue. Ms Levitt found that the solicitors took a "partisan" approach and either ignored or misjudged potential conflicts of interest. Further, the general counsel, a former Fieldfisher employee placed "excessive reliance" on advice from the firm.

An authority on regulating solicitors condemned 'scandalous' delays in the investigation of disciplinary cases by the SRA. Greg Treverton-Jones QC, said solicitors can wait years for their cases to conclude, even where they are exonerated or only suffer a rebuke. In the meantime, they face the 'appalling ordeal' of placing their professional lives on hold and in some cases can find themselves unemployable.

The Law Society is exploring ways to support lawyers appearing before the SDT, amid claims that young solicitors face an inequality of arms during proceedings. Earlier, Paul Sharma, president of Westminster & Holborn Law Society, claimed that young solicitors are losing their careers in 'disproportionate numbers' for small mistakes, and are being pitted against the regulator's 'battalion of lawyers'. Sharma launched a campaign to persuade the Law Society to pay for representation at the SDT. However, reporters questioned whether the Society can fund representation for its members under the Legal Services Act 2007, which prescribes the functions and permitted spending of the professional body.

The Ministry of Justice established an Industry Working Group of experts to improve standards, reliability and security in electronic signatures and other means of legally executing documents, and to address best practice in this area. The Group was set up following a recommendation by the Law Commission. The Group is chaired by Mr Justice Fraser under the oversight of Lord Justice Birss. It is aiming to produce an interim report by the end of the year, setting out its initial thoughts and areas to be explored further, together with those areas that may require public consultation.

Seven out of ten people who appealed in court against a decision to deny them disability benefits were successful. In total, more than 293,000 people across the UK have overturned a government decision at tribunal in the past three years. Most hearings centred on Personal Independence Payment (PIP), the main disability benefit. The government said it made millions of PIP decisions and 5% were overturned.

Australia is considering introducing a new cap on returns for litigation funders. The federal government published a consultation on draft legislation to restrict returns to no more than 30% of the gross proceeds of a class action litigation. Claimants would also have to consent to becoming members of a class action litigation funding scheme before funders could impose their fees or commission on them.

Market developments

The criminal legal aid sector has continued to shrink. Ministry of Justice figures show there are 1,080 providers holding a criminal legal aid contract. The number of providers has continuously declined since April 2012, when there were 1,652 criminal legal aid firms. The Law Society warned that on current trends in 15 years' time there may not be enough criminal legal aid solicitors to represent people accused by the state of serious crimes.

CILEx Regulation issued its first ABS licence, to lifetime planning and bereavement firm Trust Inheritance. TI Law will enable Trust Inheritance to offer reserved probate services to clients directly, rather than having to outsource them as it has had to previously. It has taken two years from being authorised by the LSB for CILEx Regulation to license its first ABS.

Eight initiatives were selected to enter Lawtech UK's sandbox for lawtech start-ups. They are: Legalme – an online platform that helps tenants with housing disrepair cases pursue legal claims without the need for lawyers; What Visa? – a self-service visa evaluation service for businesses and individuals; Valla – a DIY platform aiming to help people resolve employment issues; Lexyfi – an AI-powered assistant that scans electronic communication and flags issues in real-time; Avvoka – a document automation, negotiation and analytics tool designed to help law firms, in-house legal teams and businesses draft and negotiate documents; Feesier, which helps businesses and individuals split the cost of legal services into instalments at no extra cost; Hunit – a platform which transforms analogue investment agreements into legally binding smart contracts; and Smarter:Contracts and its data privacy and consent management platform Pulse, which helps businesses manage customer consents around data with greater transparency, security and control.

Partners at London law firm Mishcon de Reya voted to press ahead with a premium listing on the London Stock Exchange. Around 28% of the business is likely to be floated and every member of its 1,000-strong staff will become a shareholder. The move will make it only the second firm after DWF to list on the main exchange rather than AIM.

Mishcon de Reya created a £150m litigation funding arm in partnership with a third-party funder, Harbour. MDR Solutions I will fund litigation and arbitration cases for Mishcon de Reya's clients, including complex fraud cases, intellectual property disputes, group litigation, and asset recoveries. Harbour has committed £150m to the venture, while Mishcon has contributed an undisclosed sum. The funding unit will be operationally separate to the law firm and will be responsible for assessing and investing in prospective cases. It will use 'sophisticated data science' to help decide which cases to invest in.

A litigation funding platform launched an "automated secondary market" to allow high-net-worth individuals to trade investments in cases that already have funding and are being litigated. AxiaFunder said the secondary market, believed to be the first of its kind, would be "carefully supervised" and investments could not be traded close to key case events, such as mediations or court hearings. Buyers must invest at least £500.

City firm Gateley signed a litigation funding facility worth up to £50m to spend on investments in future cases. The cash injection has been arranged with Bench Walk Advisers LLC, a litigation funder headquartered in Delaware. Gateley, which has around 120 dispute resolution lawyers on its books, said the deal will create a single finance line between the firm and the funder, with finance made available at no risk to clients.

ULS Technology (a property technology firm) bought Amity Law (a firm of licensed conveyancers to help it test products in a "live environment" before launch. ULS, which is listed on AIM, owns the eConveyancer and DigitalMove brands used by property intermediaries and consumers, and the Legal Eye risk and compliance service for law firms.

Coadjute is to trial a crypto-currency to replace the traditional transfer of money between banks and conveyancers. It said releasing funds in 'stablecoins' would help speed up property transactions and make them resistant to fraud as solicitors would not have to handle client money. A stablecoin is a type of cryptocurrency whose value is linked to a 'stable' asset, in this case a mortgage. It claimed lowering the risk of transactions might lower the cost of professional indemnity insurance for conveyancers by more than 15%.

Inperio – a leading professional indemnity insurer – is offering lower premiums to conveyancing firms on condition they use a specific system for verifying client identities. The system is a client-onboarding platform from specialist startup Thirdfort. The company claims that its product is the first to comply fully with HM Land Registry's new digital ID standard. This involves checks on government databases as well as a 'liveness' test carried out with a mobile phone and is designed to combat property fraud.

Market intelligence and research

LexisNexis research found smaller law firms have survived the pandemic well but are very worried about possible increases in the cost of PII. 93% were confident in the future – a higher proportion than before the virus. Firms reported an average increase of around 30% in PII attributed to increased risk during the pandemic and a hardening market. After PII, the most commonly mentioned "very significant threat" was from the continuing demands of compliance (22%) and the need to attract and retain good lawyers (21%).

The Life in the Law Survey conducted by LawCare concluded that the **organisational culture of the legal profession needs to change to tackle the ongoing problems of mental ill-health, bullying and harassment**. Another conclusion was that initiatives introduced over the past two decades to tackle bullying and harassment "have had little significant impact". Just over one in five participants (22%) said they had experienced bullying, harassment or discrimination in the workplace in the previous 12 months. Most respondents (69%) had experienced mental ill-health (whether clinically or self-diagnosed) over the same period. The research highlighted the intensity of work many faced: almost two-thirds felt they needed to check emails outside of regular work hours to keep up with their workload, and 28% said their work required them to be available to clients 24/7. Women, people from an ethnic minority group or having a disability averaged higher in burnout, and also reported having lower autonomy and lower psychological safety at work.

A Bar Council report found candidates from Black backgrounds are much less likely than other candidates to secure a pupillage. Those who received free school meals also fared disproportionately badly, as, to a lesser extent, did women. The report analysed the 2021 figures from the centralised Pupillage Gateway, run by the Bar Council, which is used by 60-70% of pupillage applicants and around half of training providers. There was an average of 150 applicants for every pupillage advertised on the gateway. Fewer than half of all applicants (47%) were from White backgrounds in the UK, but they accounted for just over 60% of pupillage offers made through the gateway. White candidates were more than twice as likely to receive an offer of pupillage as those from ethnic minority backgrounds – just over 10% compared to just over 4%. Candidates from Black backgrounds had the lowest success rate in terms of receiving an offer of pupillage (2.5%).

Bar Council figures show the income gap between male and female barristers has widened over the past 20 years. Men earned on average almost £35,000 more than their female colleagues in 2020. In 2000, the difference was £19,860, although the percentage gap has stayed largely the same. The pay gap is particularly pronounced among arbitrators, umpires and mediators, with women earning 59% than their male counterparts on average.

Economic modelling by Pragmatix Advisory Limited and Centre for Economics and Business Research suggested **HM Treasury would save £4bn over the next year by supporting free legal advice to society's most vulnerable**. The analysis found organisations supported by the Community Justice Fund help 483,000 clients a year. The average cost of advice provision is £510 per person but the average net benefit to HM Treasury for each client helped is £8,000. The report says HM Treasury would save an estimated £9.5bn over the next decade with a 'conservative' estimate putting the potential saving at £1.34bn.

A study commissioned by the judiciary suggested **efforts should be made to make English law the jurisdiction of choice in emerging sectors such as fintech and artificial intelligence** to fend off international competition. It considered there is potential for English law to take the lead in many emerging sectors and industries, gaining 'first-mover advantage' and setting a global market standard. The report said that several jurisdictions are now promoting their own legal systems to attract more international business.