News round-up

(Covers the period 13 October to 16 November 2021)

The top five

In the Budget, the Chancellor pledged a 4.1% real terms increase by 2025 in the Ministry of Justice's day-to-day resources. The budget will increase from £8.4bn this year to £10.1bn in 2024/25. The money will be used reduce the backlog of cases in the courts and increase the thresholds for means-tested legal aid. Representatives of the legal profession generally welcomed the investment as a step in the right direction.

A major report by the Bar Council, *Race at the Bar*, called on all organisations with a stake in the profession to set specific targets for improvement. The report reflected an overall sentiment that there has been too much talk and too little change. There was an overarching recommendation that Bar-based stakeholders should consult on, identify and publish their goals for improving diversity and the timeframe within which they intend to achieve them. These should be measurable targets for improvement rather than quotas, with a year to set them and five and 10-year stages to implement them. Bodies should have to explain why any targets have not been met. Drawing on a range of data sources, the report laid out how barristers from ethnic minority communities and backgrounds, and especially women, face systemic obstacles to building sustainable careers and a more hostile and fatiguing working environment than White colleagues. Further, some ethnic minority groups face more significant challenges than others, and that intersectionality enhances barriers.

Simplify, the country's largest conveyancing group was hit by a cyber-attack leaving it unable to access IT systems for several days. Firms within the group are regulated by the CLC, which called on the group to improve its communications with clients. The incident was covered in the national media which reported thousands of property-buyers left in limbo with transactions unable to be processed. Separately, the SRA revealed that law firms had lost nearly £1m – and probably much more – to cyber-attacks in the first half of this year.

A government amendment to the Professional Qualifications Bill means legal regulators will not be forced to recognise foreign qualifications under international trade deals. The bill revokes the current system for recognition of overseas professional qualifications, which derives from EU law. Under the new regime, European qualifications will no longer receive preferential treatment.

The BSB is consulting on a new three-year strategy. Proposed priorities include providing consumers with confidence in using the services of barristers; maintaining and improving access to justice; enabling the benefits and mitigating the risks of innovation and technology; and promoting best practice in chambers' oversight of standards and diversity. The BSB has asked for views on becoming a legally separate entity from the Bar Council.

Political developments affecting the justice sector

UK lawyers will be able to practise in New Zealand more easily under a new trade deal. The agreement in principle states that the final deal will contain provisions aimed at driving collaboration between legal regulators to address current barriers to local practice. Authorities will be encouraged to operate ‘efficient and transparent’ routes to the recognition of professional qualifications. The Law Society welcomed the deal.

Alistair Carmichael, co-chairman of the all-party parliamentary group on Hong Kong, called on the eight UK judges remaining on the territory’s top court to resign. He said their presence was lending “a false veneer of respectability to a justice system which is no longer just”. British and other Commonwealth judges have sat as non-permanent judges on Hong Kong’s court of final appeal since the former colony was handed back to China.

The Lord Chancellor and the Lord Chief Justice made proposals for reforming the disciplinary regime for judges. The system is set to become quicker and clearer, but hearings will remain behind closed doors. Among the proposals put forward are an expedited procedure for less serious cases, a lay majority on disciplinary tribunals and the publication, for longer periods, of more detailed statements about judicial misconduct.

An independent review of legal aid by a cross-party group of MPs and peers called for a 25% pay rise for legal aid lawyers, publicly funded training grants and a return to the pre-LASPO position for early legal advice. The Westminster Commission on Legal Aid said the system was neither “sufficient” nor “sustainable”, and access to justice should be available to “individuals throughout England and Wales” and not just in the big cities.

The government is consulting on how the copyright and patent system should deal with AI. It is seeking evidence and views on the extent to which patents and copyright should protect inventions and creative works made by AI; and measures to make it easier to use copyright protected material in AI development, supporting innovation and research.

The Lord Chancellor committed to publishing criminal justice scorecards for general crime and rape by Christmas. This is designed to give rape victims confidence in the justice system to come forward. He said that he also wants to deter defence lawyers from the 'widespread practice' of encouraging the accused of waiting until they get to court before deciding to plead guilty. The scorecards are part of the government's plan to return the volume of rape cases going through the courts to 2016 levels by the end of this parliament.

Covid-19

A report by the National Audit Office concluded that the backlog of criminal cases waiting to be heard in England and Wales is set to last beyond 2024. It said delays are “likely to be a pervasive issue for several years” and the number of cases waiting to be heard could still be between 17 per cent and 27 per cent higher than pre-pandemic levels in November 2024. The crown court backlog in England and Wales has risen by 19,000 since March 2020 and reached 60,692 cases at the end of June 2021. The NAO noted, according to a Ministry of Justice estimate in April 2021, that an additional £500m in funding would be needed between 2021 and 2024 to reduce the backlog to below 50,000.

Regulatory and wider policy developments

Jenny Watson CBE replaced Michael Kaplan as the chair of the ICAEW Regulatory board. She previously served as chair of the UK Electoral Commission, the independent Complaints Panel at the Portman Group and the Equal Opportunities Commission. She has also held non-executive roles at the FRC and the Financial Ombudsman Service.

Diane McGiffen succeeds Lorna Jack as chief executive of the Law Society of Scotland. Ms McGiffen has worked in senior roles at Audit Scotland for the last 20 years.

Charles Randell CBE, Chairman of the Financial Conduct Authority and the Payment Systems Regulator is to leave both roles in Spring 2022. He was appointed to both roles in April 2018.

The SRA published its business plan for 2021. The work includes a fresh attempt to assess the advocacy standards of solicitors; considering ways to 'improve competence' among qualified solicitors and how to identify poor practice and areas of increased risk to clients; a thematic review of the role of money laundering officers in law firms; promote its "improved" SRA innovation space and "develop a programme of new 'proof of concept' activity and collaborative actions to continue to maximise our impact on responsible technology and innovation"; a 'year three' evaluation of the transparency rules on price and service; and begin a 10yr evaluation programme of the SQE reforms.

In its first annual report as an anti-money laundering professional supervisor, the SRA said it made a total of 85 visits and carried out a further 168 desk-based reviews. The most common reason for non-compliance with AML regulations was not having a proper risk assessment in place, poor client due diligence and insufficient checks on the source of funds. Other reasons were a failure of staff to follow procedures, inadequate training or supervision, and poor AML policies. In total 273 reports of potential AML breaches were made to the SRA, with 29 enforcement actions resulting in fines of £160,000 being issued. The SRA made 39 suspicious activity reports to the National Crime Agency.

The SRA and its exam provider Kaplan outlined a variety of 'reasonable adjustments' that have been introduced as the SQE first assessments get under way. These include use of popular assistive technology products. Some types of technology are already integrated at Pearson VUE test centres, such as providing adjustable fonts, magnification software and contrast/colour adaptations.

The SRA is leading a project called the Agile Nations Lawtech Innovation Network (ANLIN) aimed at helping to create a global market for legal services. It is one of 10 initiatives agreed by the seven countries that make up the Agile Nations – the UK, Denmark, Canada, Italy, Japan, Singapore and the UAE. Launched last December with the support of the World Economic Forum and the OECD, Agile Nations reflects the seven countries' commitment to creating a regulatory environment in which new ideas can thrive. The agreement paves the way for them to cooperate in helping innovators navigate each country's rules, test new ideas with regulators and scale them across the seven markets.

The SRA launched a pilot on unbundling in family law. The BSB, Law Society and LSCP are also involved. Meanwhile, a pilot version of an unbundled family law service for litigants in person established by Law for Life and family lawyers' group Resolution has enabled them to save 70% on legal fees and is to be expanded. The Affordable Advice service is accessed through online family law advice guides and delivered through video appointments.

Under new SRA rules, PII policies will have to make clear whether cover is provided for cyber losses. The new clause outlining the extent of cover will be added to the minimum terms and conditions of law firms' PII policies. The minimum cover is for client and third-party protection. Losses to the law firm, except for certain costs of investigating and defending a claim, are not covered. Firms can choose to purchase a separate cyber policy for other risks.

The BSB signalled it is to toughen up its approach to enforcement of transparency rules. Approaching one in 10 chambers completing the annual regulatory return admitted failing to comply with rules requiring them to provide details on their websites of the types of service they provide and commonly used pricing models. Reasons for non-compliance included the cost of updating websites and the time taken to collect all the information from tenants. But a third of chambers that have embraced the rules say they are seeing benefits.

The BSB warned there could be 'real challenges' ahead if the average age of barristers continues to rise, following a study which found that 40% of barristers are now over 50 years old. It said the problems are likely to be hardest felt within the publicly funded bar but may unevenly affect women and those from minority ethnic backgrounds. A study of the bar over the past 30 years revealed that it is getting considerably older, with the average age of a practising barrister rising from 38.5 in 1990-91 to 46.5 in 2019-20.

21 commercial law firms have joined forces on a new initiative aimed at tackling the under-representation of BAME groups in the profession. Legal CORE (Collaboration on Race and Ethnicity) describes itself as "the first leadership-led, cross-firm collective" targeting a "fundamental shift" across the UK legal sector in terms of retaining and promoting BAME lawyers. A first project will be a pilot of a leadership forum for senior leaders "to facilitate conversations on championing race diversity and explore how to effect change within their firm". There will also be a cross-firm hackathon, inviting participants from across the sector to crowdsource ideas, and a best practice forum "to share collective success and challenges on themes such as data analytics, reverse mentoring and retaining Black talent".

Lawyers acting for the government sought to prevent the Post Office scandal inquiry from looking into the role of legal advisers. The inquiry heard submissions as part of a preliminary hearing to establish what issues will be examined. BEIS says the issue of the role of lawyers would be too time-consuming to examine and would be dealt with better in other ways, either through pursuing possible negligence claims or through regulatory action. Lawyers acting for the sub-postmasters and mistresses argued that the role of lawyers should be within scope. Echoing this, Professor Richard Moorhead said what happened had been a 'lawyering scandal' as much was an IT-based one and submitted that some of the work before and since prosecutions was done 'incompetently or unethically'.

The Master of the Rolls named Professor Richard Susskind as chair of a new group focused on technology in the civil justice system. The group has four tasks: to take and encourage a long-term view of the impact of technology on the administration of justice, with emphasis on increasing access to justice and securing the position of the legal system of England and Wales as a global leader; to monitor emerging and likely technological developments; to advise on whether current systems and activities are feasible in the long run; and to propose a road map for the justice system through the 2020s.

The Master of the Rolls predicted that online bots powered by AI will help resolve simple disputes in the future. The online system he envisages would have a website and associated app at the front end which would signpost users to all accredited dispute resolution platforms, whether linked to an ombudsman scheme, a review mechanism, or some other portal as the second stage – or, where there is no pre-action scheme, directly to the online court. The site would be regulated, and the platforms accredited, by the new online rules committee for which the government is currently legislating.

Gregory Treverton-Jones QC, a regulatory specialist, suggested that **the commercial imperative for solicitors to 'come quietly' and avoid lengthy disciplinary proceedings is getting stronger as the insurance market hardens**. He said large firms tend to be well insured and are covered for the legal costs of participating in SRA investigations, but that such cover is getting harder and more expensive to find. Yet smaller firms tend not to have insurance cover at all. On the current law, if they are acquitted in the SDT they are most unlikely to get an order that the SRA pays its costs, which makes it unattractive for insurers. The Law Society has said it is exploring ways to support lawyers appearing at the SDT. One proposed solution is that the Society pays for representation on a discretionary basis.

A family court judge dismissed 28 divorce petitions from the same company after a finding that particulars of behaviour were 'absolutely identical' to each other. Mr Justice Moor declined to refer those responsible to the Director of Public Prosecutions but warned he would have 'no hesitation' in doing so if there was any repeat. All 28 petitions were drafted by and filed by an unregulated legal business.

The Law Society published a climate change resolution ahead of the Cop26 summit. It said solicitors and law firms need to prepare for how the consequences of the climate crisis will affect them and contribute to the global drive to transition to net-zero. 'This includes identifying climate change-related risks and greener courses of action, as well as reducing the greenhouse gases associated with running any business'. The resolution provoked some concern that it amounted to interfering with the principle of independent legal advice.

The president of the Family Division published a long-awaited report on transparency in family proceedings. He said that openness in the family justice system should be the norm and called for 'a major shift in culture'. He recommended reform of the automatic statutory reporting restrictions in the Administration of Justice Act 1960, which effectively prevents contemporaneous reporting of most family cases without the consent of the judge.

Market developments

The legal sector's post-pandemic rebound continued in September. ONS monthly figures showed turnover in September was £3.42 billion, 12.3% up on the same month last year. Although the legal sector grew faster than the overall UK services sector month on month, its year-on-year rebound is five percentage points smaller, reflecting the fact that many service businesses closed entirely for parts of 2020.

The Serious Fraud Office concluded its six-year investigation into the former claims company Quindell, with no further action being taken. The SFO had already announced in April 2020 that Quindell/Watchstone itself was no longer a suspect.

Eight companies in the PURE Business Group went into administration leading to 200 job losses. PURE is a collection of legal and other companies that was handling over 12,000 new instructions each year in high-volume areas of consumer litigation.

Fletchers Solicitors – the largest dedicated injury law firm in the country – was acquired by a private equity house which has plans to buy and build it into a major consumer law practice. An affiliate of Sun European Partners has acquired the firm for an undisclosed sum. Fletchers, based in Southport, was established in 1987 and employs 500 people handling serious injury, clinical negligence and motorbike accident matters. It has built a major consumer presence since 2015 through its Patient Claim Line brand.

National law firm BLM launched a subscription service for commercial work. BLM Clarity allows both SMEs and larger corporate clients to buy blocks of time at discounted rates on a range of issues. Clients can raise several issues at the same time and there are four levels of service, depending on the amount of advice needed.

UK listed law firm Ince is to acquire corporate adviser and stockbroker Arden Partners in a deal worth approximately £10m. The acquisition is the latest to come of Ince's ongoing efforts to expand its non-legal services division.

Market intelligence and research

The UK fell one place to 16th in the World Justice Project Rule of Law Index. Civil justice and criminal justice were the two worst performing elements of the UK's score. On the sub-element relating to the accessibility and affordability of the civil justice system, the UK ranks 88th out of the 139 countries measured – down from 79th in the 2020 edition. Overall, more countries declined than improved in the index for the fourth successive year. Denmark, Norway, Finland, Sweden and Germany were the top 5 ranked countries.

A report by the Social Market Foundation sponsored by Mishcon de Reya said **the civil justice system and some areas of the law in England and Wales are "in desperate need of modernisation"**. It claimed the civil justice system "performs poorly" compared to other jurisdictions, particularly Singapore, while the law itself "falls short" in important areas, such as technology. It said going to law in England and Wales "takes too long" and costs too much, and it is particularly difficult for SMEs to use. In its recommendations, the SMF said policymakers needed to "more explicitly recognise" that the civil justice system was vital social infrastructure that needed to be "nurtured and sustained" and the quality of the system needed to become a cross-governmental concern. Further, it called for English law to be modernised, so that gaps in the law on technology – such as AI or blockchain – on patterns of commerce like digital trade, or on business models and practices are filled.

The International Bar Association published a study on mental wellbeing. The survey identified high levels of stress and anxiety across all demographics, but respondents with a disability and those in the 23-29 age bracket were worst affected. The study found that more than two in five (41%) respondents would not discuss their mental health with their employer. Just less than a third (32%) said this was due to concerns they would be treated differently if they spoke out, 24% felt their employer doesn't sufficiently recognise mental wellbeing issues and 17% said that they feared not being believed or taken seriously.

A survey of ethnic minority barristers on the Northern Circuit found more than half of have experienced racial discrimination, legitimised by the "silence and inaction" of others. Racial stereotyping was the biggest problem including erroneous assumptions by judges, other barristers, solicitors and court staff that the barrister was not a barrister at all.

A report for the Bar Council found only 47% of barristers feel generally content with their working lives. 45% felt they could "cope with the competing demands" of their job in terms of workload. Female barristers were more likely to report a low level of wellbeing than men, as were ethnic minorities compared to White counsel. Employed barristers had significantly higher overall wellbeing than self-employed members of the Bar. Criminal law barristers reported significantly lower overall wellbeing than all other practice areas. Generally, as barristers get older, they report higher levels of overall wellbeing.

A comparative study by Culture Shift found the legal sector is "one of the worst across the board" for workplace culture. It was found to be particularly bad for employees leaving jobs because of a poor workplace culture and saying a negative culture had damaged their mental health. However, the legal sector performed better when it came to bullying, harassment and discrimination − all of which have regularly been highlighted as problems in the legal profession – than sectors such as healthcare and insurance.

The Criminal Bar Association said 22% of junior criminal barristers have left since 2016 and specialist chambers have reduced their tenancies by about a third. The technical definition of junior barrister is wide, encompassing all those who are not QCs but will still have been practising for decades. The CBA said that departures from the criminal Bar were acute among lawyers of five to fifteen years' call. Also, that senior barristers were leaving the criminal courts – the number of QCs who primarily work in the criminal courts has fallen in five years by half to about 130.

Research found lawyer data already in the public domain cannot easily be adapted to help consumers choose a lawyer, mainly due to failings by legal regulators. The research was commissioned by Legal Utopia – an app for consumers and SMEs to diagnose and get guidance on their legal problems – and carried out in collaboration with the University of Aberdeen, with support from Scottish non-profit innovation centre The Data Lab. Reasons included regulators lacked technical expertise and were not collecting certain data that was useful for making comparisons. In general, there was a lack of standardisation and a “disjointed ecosystem of data management and collaboration”.