News round-up

(covers the period 24 May to 4 July 2022)

Top stories

Sir Christopher Bellamy QC appointed as Parliamentary Under Secretary of State for the MoJ in the House of Lords. Sir Christopher, who recently led the Government commissioned criminal legal aid review, effectively replaces Lord Wolfson who resigned in April.

Criminal Bar Association (CBA) votes to strike. On Friday 17 June, as part of its protest against the Government's proposals on criminal legal aid, CBA members voted to escalate action to include court walkouts, refusal to accept new instructions and no returns. The first walkout took place on Monday 27 June. The days of action will increase weekly, building to a five-day walkout from 18 to 22 July. The action will resume on 1 August with a five-day walkout and subsequent fortnightly walkouts, depending on the Government's response. The Government has since confirmed that criminal barristers will receive a 15% fee rise from the end of September.

BSB issues statement on barristers deliberately failing to attend court or making themselves unavailable. Following the CBA's vote, the BSB said that in deciding to take regulatory action it would consider the circumstances, the regulatory objectives and any harm caused by the barrister's actions. TLS issued a statement saying its members must also consider their professional and contractual obligations in deciding whether to join walkouts. The LCJ has issued guidance that all cases of non-attendance should be referred to the senior presiding judge's office for consideration as to whether to involve the BSB. Subsequently, the Justice Secretary asked court staff to report counsel taking part in strike action who do not attend court to his office as well.

The CBA sought to reassure lawyers about the risk of disciplinary proceedings arising from industrial action. The CBA said any risk of professional misconduct proceedings or wasted costs orders could be mitigated by following its guidance. It noted that cover is available under the bar mutual policy for wasted costs, and that the CBA silks panel would offer advice to and represent anyone referred to the BSB for free if needed. The CBA has also received legal advice that punishing barristers for participating in strikes could be unlawful under Article 11 of the ECHR, which protects rights of association including the right to join a trade union and to strike.

The SRA will seek statutory designation as a 'prescribed person' under the Public Interest Disclosure Act to make it easier for law firm staff to report firms' involvement in SLAPP cases. The SRA is currently investigating more than 20 cases relating to SLAPPs and will shortly issue another warning notice highlighting issues it has uncovered. The SRA has contacted MPs who named firms potentially involved with SLAPPs and has been in touch with the Foreign Policy Centre and the Coalition Against SLAPPs in Europe about other potential cases.

£19.5m interim compensation package for postmasters who took initial legal action against the Post Office. While these postmasters received over £43 million in a settlement, much of this was swallowed up by the costs of their case, and they were ineligible for the Historical Shortfall Scheme set up afterwards to compensate other affected postmasters. The Government said in March that it would create a new scheme to ensure the group does not lose out, and this interim payment will provide support while the scheme is finalised. The Government has appointed Freeths LLP oversee the scheme.

Welsh Government announces plans for Welsh Human Rights Bill and steps towards a devolved justice system. Ministers propose that justice and policing in Wales be devolved, in line with other devolved administrations, to enable Wales to act separately from England on human rights, legal aid and justice.

Political developments

Government indicates legal services will not be included in Russian services exports ban. Justice Minister James Cartlidge said legal services were distinct because of the role they played in supporting democracy and the rule of law. Accountancy, management consultancy and PR services exports would be banned under Government proposals. Accountancy firms asked the Government for exemptions so they can work with Russian clients to meet professional obligations and statutory requirements. ACCA and ICAEW have asked the Government for more clarity about the sanctions.

TLS and Bar Council issue joint statement about Government criticism of lawyers. The joint statement called on the Prime Minister 'to stop attacks on legal professionals who are simply doing their jobs' and that 'legal challenges ensure Government is acting lawfully, following law agreed by Parliament'. The statement was issued following the Prime Minister's comments that lawyers representing migrants were 'abetting the work of criminal gangs.' **While dismissing an application for appeal against a decision to remove an asylum claimant to Rwanda, Supreme Court President Lord Reed had noted '**…the appellant's lawyers were performing their proper function of ensuring that their clients are not subjected to unlawful treatment at the hands of the government'.

Lord Chief Justice (LCJ) reiterates need for Lord Chancellor to support rule of law in cabinet. Lord Burnett said that in cabinet, the Lord Chancellor should not just bring their political experience and judgment as justice secretary but also 'their enhanced duty with respect to the rule of law and judicial independence' and be able to 'rein in their colleagues who…say things which sit uneasily with…the rule of law and judicial independence'. He also emphasised the executive's role in supporting judicial independence.

Report from the APPG on Democracy and the Constitution raises concerns about judicial independence about the 'high number of instances' where the Supreme Court has reversed its position on the law and adopted approaches more favourable to the executive. The APPG says this has created "the troubling appearance… of the politicisation of the judiciary". It also said Ministers acted improperly in attacking judges in a way that might reduce public confidence in the judiciary. The group concluded safeguards intended to protect judicial independence were insufficient and that the Lord Chancellor's and Attorney-General's offices had become politicised. The MoJ responded, saying it had 'the utmost respect for the judiciary and their freedom to make decisions without political interference.'

Bar Council creates an interactive Access to Justice dashboard including national and regional data on active and closed courts, legal aid providers and legal aid barristers. The Bar Council said this data revealed a 'postcode lottery of access to justice in England and Wales' with 373 (out of 573) parliamentary constituencies and 155 local authorities (out of 178) having no local courts. The Bar Council called for a 'political commitment to fund capacity across the justice system', including providing more judges, renovating courts and widening access to legal aid. In response, the Government cited its £1.3bn courts modernisation programme, the reduction in the Crown Court backlog and an increase in pay for criminal barristers.

Support Through Court (STC), the litigants-in-person support service, has launched an appeal to make up a financial shortfall following MoJ changes to funding. STC, which has received core funding from the MoJ for almost a decade needs £400,000 to avoid closing some of its regional branches. STC may be able to apply to the MoJ for further funding later this year, but the timing and eligibility criteria for this are unconfirmed.

TLS questions LCJ's assertion on judicial diversity. Responding to evidence given by Lord Burnett of Maldon to the HoL's Constitution Committee, in which he said that progress on judicial diversity had been better than generally thought, the President of TLS, I. Stephanie Boyce, noted that just 1% of judges in England and Wales are black and only 5% are Asian and that while the pool of candidates was becoming more diverse this was not translating into appointments.

CILEX Chair calls for end to legal profession's "deep-seated cultural biases". Professor Chris Bones called for an end to the profession's bias against those from non-traditional or disadvantaged backgrounds. He noted that law was one of the few sectors where many leaders had been to private schools and expressed concern about the experiences of CILEX members, most of whom are from traditionally underrepresented backgrounds. A 2021 survey of over 2000 CILEX members found they faced discrimination from employers despite their qualifications and experience.

Regulatory developments

CLSB says costs lawyers should be used more frequently to prevent cost inflation. The report suggested that large corporate buyers feel legal costs are 'out of control' and that some law firms were presenting inflated claims in conditional fee agreements. The CLSB said the report highlighted the need for regulators to focus on costs. It will undertake follow-up work.

SRA appoints researchers to examine ethnic minority overrepresentation in enforcement processes. Experts from York, Cardiff and Lancaster Universities will look at why ethnic minority solicitors are disproportionately complained about and investigated by the SRA.

SRA reported £161m of suspect transactions by law firms to the National Crime Agency during the 18 months to April 2022. The SRA made 39 suspicious activity reports (SARs) during this period. All but two involved money laundering. Three-quarters of these reports involved conveyancing transactions. A similar proportion of SARs involved sole practitioners or firms with up to 10 partners. Failure to check sources of funds was the main reason for the reports.

SRA sees rise in number of complaints and claims on its Compensation Fund. The SRA received 10,500 complaints about solicitors and 972 complaints about its service (corporate complaints) in 2020/21. This was its highest level in five years and an increase of over five percent on 2019/20. Much of the increase was due to the SRA's 2020 intervention into Kingly Solicitors. More than half of corporate complaints were about the SRA's handling of complaints about solicitors. The main reasons for these complaints continued to be outcomes, delays and communication. The SRA's independent reviewer, the CEDR, said the number of complaints it received remained 'a remarkably small proportion of the SRA's overall caseload'. The SRA said it would improve both its communication with complainants and the information on its website about its processes.

Government approves increase in SRA's fining powers to £25,000 from £2,000. The MoJ said the SRA could now fine law firms and individual solicitors for both lower-level and more serious offences. The increased powers are also intended to speed up the disciplinary process, allowing the SDT to focus on more significant allegations. Based on the level of fines the SDT currently levies, the SRA's new power should result in it issuing 90% of fines in future. As well as new fining powers, the changes to the SRA financial penalties regime include taking account of firms' turnover and individuals' financial means when setting fines, introducing fixed penalties for lower-level breaches and only considering financial penalties for sexual misconduct, discrimination and harassment in exceptional circumstances. The SRA will consult again later this year about how the fixed penalty regime will work. Solicitors and firms will still be able to appeal the SRA's decisions to the SDT.

SRA warns of increase in and evolution of cybercrime. The SRA said e-mail-based fraud and ransomware attacks were increasing and evolving to include stealing client files. Phishing made up 83% of the reports the SRA received about cybercrime last year. The SRA highlighted how criminals could use AI to make phishing e-mails more convincing. Criminals, aware of firms' focus on IT security, might also make greater use of false physical documents or voice-modification software. Law firms working on major infrastructure projects or acting for Ukrainian, Russian or Belarussian clients might also face increased risks.

Supreme Court maintains SRA costs protection for failed prosecutions. The Supreme Court ruled the SRA should continue to receive default costs protection, despite the court's decision in CMA v Flynn Pharma & Anor that the CMA should not. Justices ruled that as the SRA is funded by the legal profession this distinguishes it from similar public bodies.

TLS responds to SRA consultation on proposed changes to health and wellbeing rules. While TLS supported the overarching principle, it considered the proposed requirement to challenge bullying, harassment, or discrimination to be unnecessary and suggested the SRA consider measures like ‘speak-up’ guardians and confidential reporting. The SRA’s proposals on solicitors’ health and fitness to practice could adversely affect employers’ attitudes towards individuals and might be applied more widely than intended.

TLS, the Law Society of Scotland and the Law Society of Northern Ireland have decided to close their joint Brussels office, because of a fall in work after Brexit.

TLS appoints new CEO. Ian Jeffrey, a former managing partner and CEO of City firm Lewis Silkin, will take over from interim CEO Gerry Walsh in September.

BSB approves temporary funding to address delays caused by cyber-attack. While the malware never activated, removing it from the BSB’s IT required core systems to be offline for over a month. The BSB has prioritised its regulatory functions and approved spending of up to £100,000 to address the resulting backlog.

BSB seeks to clarify insurance requirements in relation to cyber incidents. Following a consultation, the BSB decided to seek the LSB’s approval to amend its PII MTCs to clarify that client losses from a cyber-related incident are within the scope of civil liability claims and apply to PII requirements for all self-employed barristers and BSB-regulated firms. The BSB confirmed insurers may avoid liability for claims that would breach sanctions.

CLC launches consultation on improving diversity in the conveyancing sector. The CLC considers the number of women and people of colour in senior roles in conveyancing remains unsatisfactory, despite initiatives intended to encourage entry and ensure fair career progression. In response, the CLC has proposed changes to its Equality Code. The changes will require practices to (1) cooperate with the CLC on collection and analysis of diversity data and (2) record and report complaints of discrimination, victimisation and harassment. The consultation closes on 30 August.

LSCP publishes report on monitoring and evaluation in legal services. The LSCP’s report stresses the importance of monitoring and evaluation, sets out necessary elements of doing these effectively and looks at case studies to show how these elements can be put into practice.

Legal Ombudsman says some PI claims are leaving clients worse off because solicitors are failing to consider the costs and benefits. Its report said service providers must explain the consequences if a client gives inaccurate information about their claim. 13% of complaints LeO received related to PI claims. In PI cases where the Ombudsman made a decision, 53% involved poor service. The most common complaints involved communication, delays, failure to advise and costs.

International Bar Association (IBA) looks at lawyers’ role as ‘ethical gatekeepers’ within wider society. The project will respond to criticisms of the profession including involvement with persons associated with Russia’s invasion of Ukraine. The IBA will engage with the profession’s critics, consult, and produce publications including ones about ethics in commercial legal practice and principles of conduct for the profession.

IBA has published two reports to help the legal profession with addressing bullying, sexual harassment and discrimination. The first explores regulatory and disciplinary bodies' interest in these issues. The second focuses on discrimination in the profession and looks at how legal professional bodies have tried to address it.

FRC backs International Sustainability Standards Board (ISSB) plans for worldwide environmental, social and governance (ESG) performance rules. The ISSB said there needed to be globally accepted ESG standards and performance reporting. Regulators in other jurisdictions have begun investigating firms suspected of false ESG claims. A Swiss start-up, Impactvise, said six of the top seven performing law firms in respect of ESG were primarily or partly UK-based: Clifford Chance, DLA Piper, Linklaters, DWF, Burges Salmon and Baker McKenzie. The firms' performance was partly attributable to pressure from clients.

Market developments, intelligence and research

Social Market Foundation study calls for fundamental reform of the court service in England and Wales. The study argues the poor performance of the civil and criminal courts creates a 'justice gap' and poses a threat to the rule of law in the UK. It calls for a new strategic and evidence-based approach to reform and recommends creating a 'justice research council' to better understand the issues facing the system.

Commercial Court expects large number of sanctions-related claims. There is a sizeable number of litigants affected by sanctions or the Ukrainian conflict. While the court had not yet seen any claims, it was aware of their preparation. The court would take a case-by-case approach to litigants affected by the war or sanctions.

Freshfields and Clifford Chance raise pay for newly qualified lawyers to £125,000 a year. Several firms have increased salaries for newly qualified lawyers to compete with US-based rivals. Some have also paid bonuses to lawyers working in the busiest practice areas.

UK economy slows as cost-of-living increases. Standard & Poors (S&P) global purchasing managers index showed that services firms' activity fell to a 15-month low of 51.8 in May from 58.9 in April. Consequently, activity in the UK's private sector economy also fell to a 15-month low. S&P attributed the decline to households cutting spending in response to inflation.

Social Market Foundation research finds overall public support for online justice, with only 27% opposing the use of remotely accessible procedures in civil and criminal justice. However, only 24% support AI use in civil court decision making.

Outgoing head of Lawtech says the tipping point for lawtech is "likely to come from non-lawyers and from the use of structured (ie organised) data which would support legal services providers' work. She also believed change would likely come from non-lawyers applying technology to legal services rather than from within the profession. Venture capitalists were also taking a greater interest in legal services and funding innovation.

Research shows slow progress in pay equality for women in legal services. Gapsquare, a pay tracking firm, surveyed female lawyers and law firms and found the median gender pay gap in 2022 was almost unchanged from 2017. Currently, the gap would take 40.6 years to close. The report recommended firms focus on performance rather than time served when determining pay and promotion and on ensuring higher-paid work is assigned more evenly.

SRA statistics show traditional partnerships now only 15% of firms. In 2021, over half of law firms were incorporated, around 15% were LLPs, and 19% were sole practitioners. 10% of firms were ABSs. The number of firms had declined to 9,680, 565 fewer than five years earlier, but practicing solicitors had increased to 156,298 in October 2021. Tax breaks that currently benefit large incorporated firms are due to end in April 2023, so some incorporated firms may seek to become LLPs.

Land Registry data shows conveyancers completed a record 1.26m transactions in financial year 2021/22, a rise from over 675k reported in 2020/21. There were 4,058 firms in 2021/22 compared to 3,483 in 2020/21. The rise in transactions was due to the end of Covid restrictions and clearing the backlog from the pandemic.

Insurance broker Howden says cyber-attacks increase insurance costs for professional services firms. Attacks had increased by 230% since 2019, but the increase in losses and the severity of attacks had led the average cost of cover to double in a year. Legal regulators' clarification of cyber insurance requirements had led law firms to have separate policies to protect themselves as well as their clients.

The family law market grew by 4.1% in 2021 to £1.9bn, according to IRN research, but the number of firms offering family law services declined over the past five years from around 5,700 to 5,000. HMCTS confirmed an increase in divorce applications since new rules came into force, with 1,000 more applications a week than at the same time last year.

BPP to offer paid qualifying work experience. From spring 2023, current and former students will be able to apply for six-month, full-time placements with BPP's pro bono centre. BPP will pay its trainee lawyers competitive salaries in line with TLS's recommended minimum for trainees who have completed the SQE. To be selected, students will need to have either worked at BPP's clinic or demonstrate a pro bono ethic. These placements have been made possible by the SQE's introduction.

Number of London commercial court judgments falls but proportion of foreign litigants grows. London commercial courts recorded 20% fewer judgments and 34% fewer litigants compared to last year, according to Portland's 2022 Commercial Courts Report. The courts made 234 judgments, down from a record 292 last year, but the proportion of foreign litigants increased to nearly half (456). Despite the decrease in activity, caused by a combination of Brexit, COVID-19 and increased competition from international courts, 2021/22 was the second busiest year since Portland began monitoring 10 years ago.