News round-up

(Covers the period 8 April to 25 May 2021)

The top five

ONS figures recorded a record month of turnover in March rising to £4.06bn compared to £3.1bn in February, representing a massive 30% increase in revenue. This year's March revenue figure is significantly higher than the previous year when turnover for the legal industry sat at £3.3bn, which was largely booked before the UK's first national lockdown that began on 23 March 2020.

The BSB published an independent review of the difficulties faced by students sitting the August 2020 Bar Professional Training Course (BPTC) exams. Booking difficulties, technology and other problems meant only three-quarters of the exams were successfully completed. The review concluded that the BSB's general approach to the handling of reasonable adjustments 'fell short' and highlighted deficiencies in the equality impact assessment. It sharply criticised Pearson VUE for its role in the problems, although concluded that the BSB made the correct decision to take responsibility from course providers for the examinations and to contract with Pearson VUE to provide them online. The BSB accepted the review's recommendations in full and has published an action plan.

The Law Society and LSCP joined forces to seek to persuade the SRA to rethink plans for closure of the Solicitors Indemnity Fund (SIF) in September. The SRA said the fund, which covers firms and solicitors facing claims beyond their six-year run-off period, is not within its remit and wants to pass responsibility for it to the Law Society. The Law Society has argued that in a difficult insurance market, retired solicitors may be unable to secure cover and could face huge pay-outs for historical claims. In the joint letter, the Law Society and LSCP said the SRA should either extend the SIF beyond the end of September or put in place an immediate alternative arrangement to mitigate the impact of its closure.

The Bar Tribunals and Adjudication Service (BTAS) proposed tougher sanctions for barristers who commit sexual misconduct, after facing criticism for being too lenient. In a consultation, it suggests that penalties for sexual misconduct should start at a suspension of over 12 months and finish at disbarment. Under the current guidance, a barrister found to have committed inappropriate sexual conduct in a professional context could receive a reprimand or a medium level fine. The consultation also considers the appropriate range of indicative sanctions for some other types of misconduct.

The lord chancellor and professional leaders condemned Chinese retaliatory sanctions imposed on two barristers and a set of chambers in relation to the Uyghur population. Baroness Helena Kennedy QC, Sir Geoffrey Nice QC and Essex Court Chambers were among nine individuals and entities to have sanctions imposed for 'maliciously spreading lies and disinformation' about events in Xinjiang province, after Britain sanctioned Chinese officials for human rights abuses in the region. Barristers from Essex Court Chambers had written a legal opinion, sought by clients, stating that acts conducted by the Chinese government against the Uyghurs amounted to crimes against humanity and genocide. The focus of the UK government and legal profession has been on emphasising the principle that a lawyer shouldn't be identified with the acts or views of the client.

Political developments affecting the justice sector

Liz Barclay will become the new Small Business Commissioner. She is a former CEO of Citizens Advice and consumer affairs journalist.

The EU Commission recommended the UK should not be able to join the Lugano Convention – the pact that allows legal judgments to be enforced across borders**.** This on the grounds that the UK is not a member of the EEA or EFTA. The final decision will be taken collectively by the European Council, with all countries needing to unanimously approve an application. Separately, the French authorities confirmed that UK lawyers based in France can continue advising on English and international law.

An enhanced trade partnership between the UK and India promises to lift barriers preventing UK lawyers from practising in India. It is understood that legal services will be a priority issue in forthcoming negotiations on a full free trade agreement. Foreign lawyers are not currently permitted to practise in India and there is no requalification system for foreign lawyers. However, in 2018 India's Supreme Court made a limited concession, formally allowing foreign lawyers to practise on a 'fly-in, fly-out' basis, meaning they can work in India for a set number of days each year. Attempts to open-up India to foreign law firms started over 20 years ago. So far, however, progress has been very limited.

The Professional Qualifications Bill was introduced to parliament. The Bill aims to allow skilled professionals to have their qualifications recognised in the UK where they meet UK standards. Regulators will have the autonomy to assess qualifications, and to pursue arrangements with counterparts in other countries in the interests of their professions. This complements the UK Internal Market Act, which ensures qualifications from one part of the UK are recognised across the country so the devolved administrations can set their own rules and standards, but still welcome the trade of businesses based anywhere in the UK.

The government announced that the **small claims limit for all personal injury claims other than road traffic accidents will only rise to £1,500, rather than £2,000, and its introduction deferred until April 2022**. The Lord Chief Justice urged the Ministry of Justice to review the new tariff for whiplash injuries quicker than the three years it has proposed.

The Institute for Government published a report on legal advice in government. It calls on ministers and officials to accept that judicial review improves policy and recommends that they review their own policy making processes before trying to limit judicial scrutiny of ministers' decisions. Further, that judicial review would cause less frustration in government if ministers and civil servants better understood what legal advice is for and how to use it. Among the findings was that politicians' appetite for legal risk varies, from those who "take what lawyers say as gospel" to those who have no clue that the rule of law is a thing at all.

Covid-19

A deal was struck over emergency funding to combat the backlog in criminal trials. The Lord Chief Justice will be able to ask the government for unlimited funding to open-up more courtrooms wherever judges are available. The Ministry of Justice said there will be no limit on the number of days Crown Courts can sit for the next financial year. However, it is not clear in practice how many extra court sitting days will be achievable. Meanwhile, the Crown court backlog appears to be stabilising at 58,000 cases, after swelling by almost 50% over the course of the pandemic. The number of court disposals is also on the rise, with 9,583 issued in March 2021, up from 7,831 the previous month. Disposals fell as low as

3,123 in April 2020. Before the pandemic hit, the number of outstanding cases stood at 39,331 and around 2,021 disposals were being issued per week.

Citizens Advice published a report on the support it has provided during Covid-19. Half of enquiries were on virus-related issues between September and December 2020. Its coronavirus content had over 6m views since March 2020, and its online self-help advice was viewed 63m times – an increase of nearly 10m on the previous year. Searches about county court judgments had doubled in recent weeks, suggesting that increasing numbers of people were having CCJs issued against them for the non-payment of debts. More widely, the pandemic led to greater numbers of people seeking advice on divorce and wills.

The Law Society's financial benchmarking survey found that medium-sized law firms have weathered the Covid crisis reasonably well. 60% of participants reported year-on-year growth in fee income, including one-quarter celebrating growth of more than 10%. However, solicitors expect an average fall in profits of 24% for the 2021 fiscal year due to bigger overheads, the rising cost of professional indemnity insurance cover and IT spending. The survey found that median practice fee income increased by just 1.6%, the smallest increase in nine years, while profits per equity partner were down by an average of 6.9%.

The latest LexisNexis Gross Legal Product Index – measuring the impact of Covid-19 on demand for legal services – shows that immigration and civil litigation were the two areas of legal practice hit hardest by the pandemic during 2020, with private client and family law "insulated" from the impact. It said the number of civil cases progressing through the courts fell at a greater rate than criminal cases. The practice areas which grew fastest were risk and compliance, up by almost 22%, and commercial, up by almost 11%. LexisNexis said 2020 was a "rollercoaster year" for residential property. Despite the boom in conveyancing caused by the stamp duty land tax holiday, overall demand for property work fell by 13%. There was a 75% increase in wills enquiries, family work recovered in the final quarter and applications and total disposed cases for domestic violence increased by over 20%.

Regulatory and wider policy developments

Anna Bradley was reappointed as chair of the SRA until December 2024.

The SRA confirmed the **first sitting of SQE2 exam** will take place in the week commencing 11 April 2022. The first-ever SQE1 assessment dates have previously been announced as taking place on 8 and 11 November 2021. It has been declared safe to go ahead under current public health advice by the assessment's independent reviewer.

The SRA withdrew a proposal to reduce the single claim limit on the compensation fund from £2m to £500,000 following the LSB's warning notice. This should allow the remaining elements of the reform package to proceed more quickly. The SRA said that its decision does not preclude returning to this proposal at some future date.

The SRA is consulting on a draft business plan and signalled a wish to increase its budget by £2m. As well as implementing the SQE, initiatives include: expanding the rolling programme of anti-money laundering visits to law firms and publishing a review of the role of money laundering officers; creating an internal quality assurance team, independent of the SRA's operational work, to help assure the standards and consistency of enforcement decision making; evaluating its approach to using fining powers; working towards a centralised assessment for the higher rights of audience qualification; and developing "specific initiatives that promote and develop the use of legal technology and innovation".

The SRA launched a consultation on adding a clause on cyber losses to the minimum terms and conditions of professional indemnity insurance to provide “absolute clarity” for law firms, insurers and consumers, without altering the scope of consumer protection. Cyber-attacks are on the rise; cybercrime caused £2.5m of reported losses to law firms in the first half of 2020 alone. The new clause would be in line with the expectations of the Prudential Regulation Authority (PRA) and Lloyd’s of London who are concerned that some policies were not specific enough about exactly which cyber-related losses are covered.

BARBRI entered partnerships with three international law schools to help overseas students qualify as lawyers in England and Wales under the SQE. France’s Paris Dauphine — PSL University, Spain’s IE Law School and Singapore’s Asia Bar Review will deliver BARBRI’s new SQE prep courses to law students and graduates.

The number of graduates competing for pupillages rose by over 1,000 this year. According to Bar Council figures, 3,301 candidates applied for just 246 positions via the pupillage gateway in 2021. On average, applicants submitted around six application each. In 2020, 2,142 applicants competed for 237 pupillages. When the pandemic hit, many chambers delayed recruiting pupils due to the financial uncertainty.

The CLC is consulting on introducing a ‘polluter pays’ element to how it recovers the cost of the Legal Ombudsman from those it regulates. Rather than spreading the cost of LeO evenly across its regulated community it is proposing instead to place a greater burden on the law firms that generate high numbers of complaints compared to their size.

There were calls for legal regulators to investigate lawyers acting for the Post Office in cases which led to the wrongful convictions of 39 sub-postmasters. A statutory inquiry is to be established but there were also calls for a full public inquiry. The former sub-postmasters were wrongly convicted of stealing money from the Post Office based on data from the flawed Horizon computer system, with some given long prison sentences. Appeal judges found that the Post Office knew there were serious issues about the reliability of Horizon but failed to adequately consider or disclose them to the people it prosecuted.

Army veterans pursued for years over allegations of war crimes in Iraq began legal proceedings against the Ministry of Defence and the lawyers who led the claims. Retired former army officer Major Robert Campbell is heading the action by around 30 ex-service personnel. The Campbell case is against the MoD and Phil Shiner’s professional indemnity insurers, as his firm has since collapsed and Shiner himself has been struck off for dishonesty in relation to the public inquiry looking into the Iraqi claims.

HM Judiciary finalised a new appointments protocol for SDT panel members. Under the Solicitors Act 1974 panel members are appointed by the master of the rolls. The new arrangements include an appointment panel chair responsible for monitoring compliance. Among other matters, the protocol covers eligibility criteria, the appointment process and the advertising of vacancies. It includes an ‘equal merit’ provision under which when two or more applicants are of equal merit, a selection panel may prefer one of them over the other or others for the purpose of increasing diversity.

Eight anonymous, serving judges sent a letter to the Commons justice select committee saying colleagues have been “undermined, belittled or accused of being mentally unstable” for raising concerns about a lack of diversity within the judiciary. The judges also criticise the Judicial Appointments Commission for failing to ensure judges are appointed solely on merit. The committee is urged to conduct an independent audit of discrimination, bullying and leadership structures within the judiciary, and of the system for appointing and promoting judges. The judiciary has revealed that a whistleblowing policy will shortly be introduced as will a periodic survey of judges' welfare.

The Crown Prosecution Service published a 2025 advocacy strategy. It pledges to maintaining "a mixed economy" of employed and private practice advocates. It also promises to give issues such as diversity greater prominence and to publish a new CPS diversity and inclusion statement for the Bar. Recently published research showed that only 16 of the 100 barristers paid the most by the CPS were women, and 19% of the best-paid 500.

The UK Jurisdiction Taskforce, chaired by Sir Geoffrey Vos, master of the rolls, published **Digital Dispute Resolution Rules designed to enable faster and more cost-effective resolutions to disputes relating to novel digital technology** such as crypto assets, smart contracts and blockchain applications. If parties adopt the rules, these disputes would mainly be resolved by arbitration rather than in court.

The Intellectual Property Office launched 'One IPO' Transformation - a five-year programme to transform IP services and enhance the value IPO adds to the UK economy. The centrepiece of the programme is a single, integrated system for all registered IP rights (patents, trademarks and designs). This will allow creatives, innovators and businesses to seamlessly apply for, manage and research all their IP rights in one place.

The Department of Health and Social Care is consulting on proposals to reform the regulation of healthcare professionals. The proposed reforms cover four key areas: governance and operating framework; education and training; registration; and fitness to practise. Under the proposals, all regulators would be given a new power to set standards for CPD and/or revalidation. Meanwhile, the department published a White Paper, which would extend powers to make changes to the regulation of healthcare professionals. In order to inform how these additional powers might be used, the department is commissioning an independent review of the number of regulators. The department also intends to commission a review of the professions that are currently regulated in the UK, to consider whether statutory regulation remains appropriate for these professions.

The FCA is proposing to introduce a new 'Consumer Duty', that would set higher expectations for the standard of care that firms provide to consumers. For many firms, this would require a significant shift in culture and behaviour, where they consistently focus on consumer outcomes, and put customers in a position where they can act and make decisions in their interests. It will apply to manufacturers of products as well as retailers. The consultation also proposes that firms should take additional care to ensure vulnerable consumers receive outcomes that are as good as for other consumers.

In Ireland, the Minister for Justice asked the Legal Services Regulatory Authority to prepare a report considering **the creation of a new conveyancer profession** to increase competition in legal services. Separately, the Minister has asked the LSRA to carry out research on barriers for solicitors and barristers and increasing diversity.

There were unconfirmed reports that the **government plans to create the first single comprehensive repository of England and Wales court judgments** to be run by the National Archives. Almost every decision made by courts and tribunals would be published, unlike the current selective system run by BAILII. Data would also be open for bulk research and analysis, including for training artificial intelligence systems to forecast case outcomes. The move, which would require primary legislation, may face opposition from senior judges due to concern about the loss of control over judgments.

Market developments

Online legal services provider Rocket Lawyer received a £161m funding boost led by Vista Credit Partners to meet growing demand and scale up its cloud-based case management system. Rocket Lawyer started in the US in 2008 and launched in the UK in 2012, since when it has also expanded to France, Spain and the Netherlands.

Legal Utopia launched an app which helps users find and book a lawyer and is integrated with government services. It assists users in identifying more than 400,000 everyday legal problems through its Legal Checker function, and provides more than 5,000 legal documents, 24,000 FAQs and 10,000 pages of legal guidance. Some features are free to access, but for the remainder consumers pay either £60 a year, £9.99 a month or they can buy credits for 99p. The developers believe Legal Utopia is the first business to enable users to access online government services in-app, such as money claims, company incorporation, benefits appeals and divorce petitions.

An app was launched linking consumers to lawyers via free video consultations. Lawyer 365 covers the full range of consumer and business legal services, including personal injury and criminal law as well as intellectual property and business law. It also provides a host of legal documents. Consumers can get up to 30mins of free advice with the service funded by subscriptions from lawyers. Lawyer 365 does not regulate the fees firms charge clients who want to instruct them but requires that they be clear and transparent.

Mishcon de Reya announced plans to list on the London Stock Exchange. It would be only the second firm after DWF to list on the main exchange rather than AIM, where the others law firms are. The move might take place as early as the fourth quarter of 2021.

US dispersed law firm Rimon entered the market as an ABS, with plans to expand rapidly and challenge the likes of Keystone Law and gunnercooke. Rimon is a “hybrid” firm in that while its lawyers are spread far and wide, it offers a full, if “streamlined”, support service and 37 offices around the world from which its 114 partners can work.

The number of claims management companies has continued to fall. Data from the Financial Conduct Authority shows an 80% fall over the past decade, from 3,213 in 2011 to 1,238 – the year before the FCA took over the regulation of CMCs in April 2019.

Market intelligence and research

The London commercial courts had a record year, quickly recovering from 2020’s dip in activity and re-establishing a six-year long trend of growth. The proportion of EU27 litigants continues to decline following Brexit, but has been offset by other foreign litigants, most notably the United States and Russia. Separately, a study by White & Case, in partnership with Queen Mary University of London, revealed that the popularity of Asian arbitral hubs has grown significantly in the past five years. Singapore rivals London as the most popular seat for international arbitration, with Hong Kong coming a close second.

NatWest’s annual report on SME law firms recorded an average 6% increase in profits per partner in the first six months of the pandemic despite median fees reducing by 8%. It suggested that firms had learned from the financial crash by not cutting back staff too heavily. 86% of the firms surveyed were either very optimistic or optimistic” about the future.

Thomson Reuters research found **small law firms increasingly see online legal services providers as their biggest commercial threat** and are becoming more worried about DIY providers too. This was against a backdrop of half of small and mid-sized firms considering that market conditions have worsened over the past year. More broadly, the report said the firms have “largely managed to adapt and in many cases thrive” despite Covid-19.

Analysis by Glenesk found that consumer reviews of legal services providers on Trustpilot have doubled over the last year to 6,000 in the first three months of 2021. More than eight in every 10 reviews on Trustpilot award law firms five stars, which Glenesk suggests are making them increasingly a “hygiene factor” rather than a differentiator. Its analysis found satisfaction varies by area of law with conveyancing getting the best reviews.

A Bar Council found an earnings gap between barristers on gender and race grounds. Black female barristers earn an average of almost £19,000 a year less than white males. The gap is widest in senior roles. White male QCs were found to earn on average £57,400 more than the average earnings mark, creating an average gap between them and black female barristers of more than £76,000. The report speculated that “client briefing practices” and the process for distributing better paying work within chambers caused the disparities.

A study by the International Bar Association found that **lawyer wellbeing is “a cause for global concern”**, with levels of wellbeing below the average in every part of the globe. Anxiety, fatigue and disrupted sleep were the primary effects of these problems. As well as the young, the results found “a disproportionate impact” on women, those who identify as an ethnic minority and those with disabilities, when compared with older, White men.

A membership survey by Resolution found that **a quarter of family specialists are actively considering leaving the profession**. It said a combination of long working hours, heavy workloads, client expectations and working in isolation have taken their toll on practitioners. Almost half of those considering leaving the profession are junior practitioners. Resolution said this highlighted a significant risk of a generational ‘brain drain’, adding that remote working has stalled junior lawyers' professional development.

The SRA commissioned the University of Oxford Law to conduct research with solicitors firms about their **experiences and views on the use of technology and innovation**. It will also explore what impact the Covid-19 pandemic has had on the development and use of technology. As well as surveying firms, the university is also conducting extensive wider research and interviews to gather input from a broad range of stakeholders and experts, from both within and beyond the legal profession. The research will focus particularly on innovation and technology which may improve access and services to the public.

A report by Boston Consulting Group was critical of the impact of the Legal Services Act reforms in England and Wales. It was commissioned by law societies in Denmark, Norway and Sweden to inform the debate on similar deregulation proposals in Scandinavia. The report makes four main arguments: the legal services market has not shown clear signs of increased competition, when looking at profitability of the largest 100 providers; providers appear not to have benefited from lower barriers to entry, whereas they do seem to have benefited from increased flexibility, when looking at scale and the adoption of ABS; consumers do not seem to have benefited from increased competition, when looking at price, service quality, and transparency; and it is unclear whether deregulation risks have materialised when looking at the rule of law, geographical availability, and the regulatory burden for providers. Commenting on the report, Alison Hook suggests that “it suffers from some serious flaws and misinterpretations of what is going on in England and Wales”.