News round-up

(covers the period 13 April to 23 May 2022)

The top five

The Government will introduce a Bill of Rights as part of its Queen's Speech legislative programme. This Bill would overhaul the Human Rights Act by changing the relationship between UK Courts and ECHR, alter how judges may interpret UK legislation when it is apparently incompatible with the European Convention and will introduce a permissions stage to human rights claims. The Law Society (TLS) said that the Bill will damage the rule of law, prevent access to justice and reduce or remove individuals' rights. The Bar Council said the litmus test of a remodelled Bill of Rights is whether it would provide coherent, readily applicable remedies.

Legal services exports were not covered by the round of sanctions announced by the UK Government on 4 May. These sanctions banned other services exports to Russia, including management consulting, accounting and public relations meaning Russian businesses will no longer be able to do businesses with UK professional services firms. Legal services providers will still be able to act for sanctioned clients if they have a licence from OFSI to receive reasonable fees for legal advice. The SRA has begun spot checks on firms that may be working for Russian clients and has emphasised the need to comply with AML requirements.

A solicitors firm, Discreet Law, has been reported to the SRA for bringing an alleged strategic lawsuit against public participation (SLAPP) case against the founder of the Bellingcat investigative journalism website. On the Government's call for evidence on potential reforms to SLAPPs, TLS has said that clarity over what a SLAPP is will be crucial to avoid unintended consequences. Legal professionals have spoken out on their views on the current libel laws and whether they strike the right balance.

The SRA is seeking a further one-year extension for the Solicitors Indemnity Fund (SIF) to enable "detailed consideration" of the responses to its consultation on post six-year run-off cover (PSYROC) and reach a final decision on the fund's future. The SIF's closure has been delayed three times after warnings that firm owners would struggle to find alternative cover. Most consultees did not support the preferred option of ending the requirement for PSYROC, while such was the strength of opposition to the idea of moving to an open-market solution that it has been dropped as a possible alternative.

SRA granted access to all documents relating to the Post Office scandal following its successful application to become a core participant in the Post Office Horizon IT inquiry. The extra disclosure will ensure investigators can fully probe the Post Office's team of in-house lawyers and external advisers. The SRA had already agreed a disclosure order from the Post Office in relation to the prosecutions of former sub-postmasters because of the Horizon IT scandal.

Political developments affecting the justice sector

Lord Wolfson resigned as Justice Minister in the wake of fixed penalty notices being issued to the prime minister and chancellor of the exchequer.

A US congressman called for six leading UK lawyers to be banned from the country as 'foreign enablers of Russian oligarchs'. Rep Steve Cohen asked the US Government to impose travel bans on five solicitors and a barrister for allegedly enabling the 'malign activities' of oligarchs in bringing claims against journalists in England. The charge was vigorously contested by the lawyers and law firms and TLS condemned the practice of 'publicly naming lawyers and threatening them with punishments without due process'.

As part of its Queen's Speech programme, the Government will introduce a further Economic Crime and Corporate Transparency Bill to strengthen anti-money laundering efforts, introduce powers to seize and recover crypto assets and increase Companies House's investigative powers and improve its scrutiny of company ownership. The Bill also includes the creation of a civil forfeiture power to target those who cannot be criminally prosecuted but use their funds to further criminality and will enable financial businesses to share information more effectively to prevent and detect economic crime.

Eversheds Sutherland ceased operating in Russia. The international firm addressed misunderstandings about the launch of Birch Legal, a Russia-based firm formed by former Eversheds Sutherland lawyers and support staff. Eversheds has stated that while Birch Legal will be part of its group of 'relationship firms' in jurisdictions where Eversheds does not have offices, it is not part of Eversheds and Eversheds has no financial interest in Birch Legal nor does it benefit financially if clients instruct Birch Legal or any of its relationship firms. **Clifford Chance will also close its Russian Office on 31 May.** The firm announced the launch of a new independent practice made up of its Moscow team to which Clifford Chance will transfer its existing Russian work.

A survey of litigants in the Commercial Courts showed that Russians were the largest number of non-UK litigants (41), overtaking the US (31). 54% of litigants were non-UK parties.

Chief Inspectors for the criminal justice system say Government will struggle to cut the court backlog unless it increases both prosecution and defence resources. In their latest report, the inspectors said that a reduction in the backlog remained elusive. By the end of December 2021, a quarter of cases had been waiting for a year or more to reach court with the number of cases waiting longer than a year increasing by more than 340% since March 2020. The inspectors welcomed Government initiatives to support recovery, such as removing the cap on judicial sitting days, extending Nightingale courts and opening two 'super' courtrooms but said the impact of these on the backlog had so far been minimal. The Government announced that the cap on sitting days would be lifted for another year.

A Magistrates Association report shows magistrates want a reduction in remote hearings. The report, based on the views of 865 magistrates, concluded that the use of audio and video links during the pandemic negatively affected communication and effective participation, especially for vulnerable court users.

The Judicial Review and Courts Act received Royal Assent on 28 April. Prior to the bill becoming law, the Government dropped an element of its reforms which could have limited judges' discretion over the remedies they could award in judicial review cases.

BEIS announced changes to the competition and consumer policy regime following its consultation last year. The ADR Regulations 2015 will be amended to improve the quality and oversight of ADR services. A new law is planned to ban commissioning someone to write or submit a fake review, hosting consumer reviews without taking reasonable steps to check they are genuine and offering or advertising to submit, commission or facilitate fake reviews. The CMA, instead of a court, will be able to award compensation to consumers and directly impose financial penalties for breaches of consumer protection laws up to a maximum of 10% of global turnover.

The Health and Social Care Select Committee recommended a no-fault compensation scheme for medical negligence be introduced in England, replacing the existing system based on individual blame. It also warned that the Government's decision to introduce fixed recoverable costs for claims worth less than £25,000 "may compromise access to justice for the poorest claimants". Instead, the committee called for the immediate introduction of compulsory ADR before any court proceedings and a standardised investigation process for medical errors.

Government to table secondary legislation on pre-paid funeral plan providers and the Financial Services Compensation Scheme (FSCS). The Government has published its response to consultation on proposals to ensure the FSCS can protect consumers of pre-paid funeral plan contracts if a provider fails. This will include placing an additional statutory duty of cooperation on insolvency practitioners and making it easier for funeral plan providers to transfer their funeral plan contracts to another provider before exiting the market.

Regulatory and wider developments

Professor Stephen Mayson published a report renewing his call for structural reforms to legal services regulation. In a follow-up to his Independent Review of Legal Services Regulation, Professor Mayson said bringing unregulated providers within the scope of regulation and promoting the concept of "legal well-being" would reduce unmet need and improve competition.

The SDT has reviewed its listings strategy. From 1 June case management and interim application hearings will be heard remotely by default, but parties can apply for in-person hearings. Conversely, all substantive hearings will be in person by default, but parties can apply for a remote hearing.

The SRA launched a consultation on its 2022/23 business plan and budget. The SRA's proposed plan includes its current work on fining powers, publication policy, and solicitors' health and wellbeing, supporting lawtech and innovation. Amongst other new initiatives, it will expand its work on AML, undertake research on the over-representation of BAME solicitors in enforcement processes and the attainment gap in professional assessments, review the PII market, and look at unregulated service provision. The SRA is proposing a budget increase of £5.3m to £84.7m, with its and the TLS's share of the PCF fee rising by £6 and £5 respectively. The increase in individual PCFs would be offset by a £10 reduction in individual Compensation Fund contributions.

SRA consults on its disciplinary publication policy. The SRA has launched a consultation on how it publishes decisions about disciplinary and regulatory action including how information is made available, how much is published, for how long, and when information should not be published. The consultation runs until 2 August.

SRA invites comments on regulation of law firms selling funeral plans as intermediaries. In a discussion paper, the SRA welcomed the introduction this summer of a new regulatory regime for funeral plans and noted that it had not seen any evidence of consumer detriment when SRA-regulated firms sold funeral plans as intermediaries, but it wanted to better understand the market and consider whether and how it should be regulated and whether this should be done by the SRA or FCA. The SRA has invited stakeholders to comment by 1 June 2022.

The SRA published its first report on its own ethnicity pay gap. The report shows that its mean pay gap is 21.5 per cent, and the median pay gap – which is the difference between the midpoint in the ranges - is 15 per cent. The gap is driven by a higher proportion of White staff in more senior positions (88 per cent of the upper pay quartile).

BSB clears barrister over Hillsborough remarks. A senior barrister, Jonathan Goldberg QC, who repeated police allegations about the behaviour of Liverpool supporters at the Hillsborough disaster was cleared of misconduct by the BSB. The BSB decided that he had not breached the professional standards expected of barristers, and said it remained "reasonable" for somebody "in good faith" to repeat the original police allegations, even though there remained "significant controversy" about them, and that the right of free speech allows criticism of legal findings.

BSB to undertake review of its regulatory operations. As part of an effort to improve its efficiency in dealing with the increasing number and complexity of complaints, the BSB will undertake a full-scale review of its regulatory operations.

CILEx Regulation (CRL) is consulting on changes to consumer protection arrangements for clients of authorised entities. CRL is proposing to remove the ability for its regulated firms to hold client money and replace the existing 'client account' arrangements with a Third-Party Managed Account (TPMA) supplied by Shield Pay. This proposal is intended to ensure the longer-term sustainability of arrangements protecting clients from potential dishonesty, after the withdrawal last year by the insurer underwriting CRL's compensation arrangements. The consultation closes on 8 July.

CILEx Regulation (CRL) consulted on a proposal for a permanent presumption in favour of remote (virtual) disciplinary proceedings unless there are circumstances that make it unfair to proceed remotely. The consultation closed on 28 April.

The CLC finalised a package of reforms on professional indemnity insurance, subject to LSB approval. Firms regulated by the CLC will have to submit at least one application for PII two months ahead of the renewal deadline and insurers will then be required to respond no less than one month before the deadline. These changes aim to reduce the risks involved when firms and insurers renew close to the cut-off date. Despite insurers' requests, the CLC will continue to require integrated run-off cover.

ICAEW is consulting on minor amendments to its regulatory board's (IRB) Legal Services Strategy. Responses to the consultation, which will inform ICAEW's legal services business plan, are due 23 May.

The Bar Council suffered a malicious cyber-attack. Emails and the MyBar portal were temporarily unavailable, while applications for authorisation to practise were extended a month to 31 May, as were renewals of court ID cards. Law firm Ward Hadaway was also attacked, joining a growing list of providers including Simplify, listed law firm Ince, leading criminal practice Tuckers and 4 New Square chambers.

CITMA elects new president. Rachel Wilkinson-Duffy, a partner in the intellectual property department at Baker McKenzie, began her two-year term in the role on 12th April 2022.

Judge says legal regulators should have a summary process to deal with vexatious litigants. In a case about the renewal of a general civil restraint order, Mr Justice Saini said legal regulators needed to be astute in identifying litigants who abuse regulatory processes to pursue complaints about the outcome of cases rather than genuine claims of professional misconduct.

A new official route for the online publication of court judgments went live. The new service from the National Archives, called Find Case Law, presents judgments formatted to ease analysis by computer. For the first time, judgments are published under a clear copyright licence permitting such use. Judgments will be freely available for computational analysis subject to a licence which must be applied for. For new uses, the archives will in turn check with the Ministry of Justice that the processing is compatible with the proper administration of justice. This solution is designed to address the vexed question of bulk processing, including training machine-learning systems to predict case outcomes.

Judiciary publishes new guidance on electronic bundles. Senior judges said electronic bundles in the financial remedies court had gone from rare to almost universal in two years. The judges said they would clarify current guidance on preparing electronic bundles to assist litigants-in-person. TLS welcomed the new guidance but said that increasing digitisation of court processes could make them harder for litigants-in-person to understand.

KPMG faces record £14.4m fine after a tribunal found five former KPMG employees deliberately misled the Financial Reporting Council (FRC). The FRC had agreed to reduce KPMG's fine from £20m as it had cooperated with investigators and admitted wrongdoing in relation to misconduct during FRC inspections into KPMG's audits of a software developer Carillion. **KPMG plans to double the size of its UK legal practice over the next three years by raising its total number of** practising solicitors to over 400 by taking on a further 220 lawyers by the end of 2024.

Market Developments

A new comparison website for small businesses was launched. Legal Drop vets lawyers before they are featured on the site. They then commit to offering fixed fees for certain defined tasks. Legal Drop charges lawyers a commission on work received although the business aims to replace this with a subscription model.

The UK legal services sector continues to grow despite sanctions. Office of National Statistics figures showed the sector's turnover totalled £4.05bn in March, an increase of 19% from February. This was slightly behind the overall UK services sector, whose turnover increased by 20% in the same period to £243.4bn.

Irwin Mitchell announces expansion. It will open in Cardiff and Liverpool in May bringing the number of its UK offices to 17. The firm also said it would pay non-partner staff an extra £900 in April to help with inflation.

City firm announces 20% reduction in salaries for staff who choose to work from home full-time. Stephenson Harwood's UK-based staff who accept the offer will need to come to the office monthly. Other staff will be able to choose to work remotely for two days a week.

A group of City law firms have developed a bespoke SQE training programme. The group's (Freshfields, Herbert Smith Freehills, Hogan Lovells, Norton Rose Fulbright, Linklaters and Slaughter & May) programme will see trainees who have completed SQE1 and are preparing for SQE2 undertake training in the firms' specialisms and general skills, behaviours and topics, like legal technology.

CILEX, TLS and the Welsh Government launched legal apprenticeships in Wales. Around 700 organisations in Wales are able to sponsor apprentices, and employers can recruit or sponsor existing employees from June.

Market Intelligence and Research

British consumer confidence has fallen to a near all-time low driven by concerns over the soaring cost of living. The UK consumer confidence index, a measure of how people view the state of their personal finances and wider economic prospects, fell seven points to minus 38 in April, its lowest level since 2008.

TLS's annual Financial Benchmarking Survey showed that small to mid-tier firms thrived in 2020-21 boosted by fiscal breaks and furlough cash. After two years of declining profits, median net profit per partner grew by 39%, from £146,417 in 2020 to £203,199 in 2021. More than eight out of ten firms furloughed staff and three-quarters borrowed money through the Bounce Back Loan Scheme or Coronavirus Business Interruption Loan Scheme. Many firms have yet to deploy the loans, either keeping or using them to pay for rising PII premiums. The report noted the pandemic had led firms to innovate in service delivery.

LexisNexis's annual Bellwether report found that nine out of ten small firms remain confident about their future. However, firms said they faced challenges from attracting and retaining both good lawyers and new business, compliance demands, PII increases and keeping working practices and legal knowledge current.

The Daily Mail warned that pre-paid probate plans could be the next mis-selling scandal. These work by asking for upfront payment for probate in return for peace of mind and protection from rising costs. However, the paper has received complaints from readers and suggested the plans could prove to be a waste of money and that any benefits "could well outweigh the risks" for consumers.

Divorce applications up in first week of 'no fault' era. HMCTS received 3,000 divorce applications in the week following the introduction of reforms designed to make the separation process less acrimonious - a 50% rise on the weekly average.

Herbert Smith Freehills junior lawyer recognised for efforts in promoting social mobility. Forbes magazine included Sophie Pender on its '30 under 30' power list for setting up the 93% Club, an organisation which seeks to address the social mobility gap in professional sectors by equipping students with the skills they need to compete in the job market. The '93%' refers to the portion of the population who are state educated.

TLS, charity LawCare and the Junior Lawyers Division (JLD) called on the profession to review its working culture amid increasing evidence of high levels of stress and burnout. Research published by LawCare showed the number of lawyers calling its helpline with stress-related issues had increased by almost a quarter in 2021. Almost two-thirds of contacts were trainees, pupils or junior lawyers. LawCare announced that it was extending its online chat service from one to four days a week.

A London Solicitors Litigation Association (LSLA) survey found that 78 percent of lawyers expect a rise in Covid-related claims. These were expected to concern contractual disputes relating to supply chain disruption, insolvencies, and business interruption insurance claims.