News round-up

(Covers the period 8 January to 4 March 2021)

The top five

The inspectorates for policing, prisons, probation and prosecutions expressed "grave concerns" about the impact of court backlogs caused by the pandemic. They said the issues it has caused could damage the criminal justice system for years and is having a ripple effect across all of criminal justice. Meanwhile, lawyers' groups suggested there is now a wait of four years from the time of an alleged offence to the case reaching crown court trial because of delays caused mainly by Covid-19. They called for more socially-distanced, emergency courts to tackle the problem. The Ministry of Justice says the backlog in the magistrates courts is beginning to reduce. How far ahead trials are being listed is disputed.

Educational providers have been unveiling their SQE offers. The College of Practice, a market disruptor, has designed a range of virtual programmes, including a SQE1 preparation course costing £1,800 and a SQE2 preparation course costing £2,300. The college's offering is one of the cheapest to be announced so far. Last year, US legal education giant Barbri unveiled a preparation course for £6,000. Meanwhile, QLTS School will prepare students, paralegals, apprentices and foreign qualified lawyers for both parts of the exam for between £3,000 and £4,900. At the other end of the market, the University of Law has developed an LLM Legal Practice course costing between £12,000 and £16,500. The LLM – which will prepare students for both elements of the SQE – will eventually replace the Legal Practice Course, which costs between £12,900 and £17,500.

The master of the rolls is to commence a 'fundamental generational reform of the civil justice system', in which all claims will begin online before entering a digital court process. Setting out his 'ultimate vision' for civil justice, Sir Geoffrey Vos said all claimants in England and Wales will be able to start their claims online creating a single transferrable data set. "What is required is an integrated online dispute resolution system that operates through online front ends and then into an online court process", Vos said.

The 2020 UK Judicial Attitude Survey found that around only one in ten judges feel valued by the government or media. A third of judges said they might quit over the next five years. As in the last survey, judges said the three factors that would make them stay are higher remuneration, better administrative support, and previous pension entitlements being restored. Changes that concerned judges the most were loss of respect for judiciary by the government (78% were 'extremely concerned') followed by staff reductions, fiscal constraints, increase in litigants in person and loss of experienced judges.

The government's National Risk Assessment of **Money Laundering and Terrorist Financing** 2020 ranked the overall risk of money laundering involving lawyers as high. The SRA followed this up with a dedicated sectoral risk assessment looking at the specific risks and challenges within legal services. Among emerging money laundering risks it identified were firms getting into new areas of work because of the financial impact of Covid-19 and handling funds generated through the legal sale of cannabis abroad.

Political developments affecting the justice sector

Professional bodies expressed disappointment that the Chancellor's Budget included no new funds for tackling the courts backlog. There was an extra £19m for domestic violence programmes to reduce the risk of reoffending. City lawyers welcomed proposals to improve the attractiveness of a London stock exchange listing for start-up companies. The property sector expressed relief about the extension of the stamp duty holiday window but some warned about the dangers of future cliff edges and called for a permanent change. The government used the Budget to respond to last year's Treasury consultation on Tackling Promoters of Tax Avoidance. Proposed changes include tougher disclosure rules, requiring information about avoidance schemes to be provided to the authorities at an earlier stage.

The whiplash reform programme will now be implemented in May. The Lord Chancellor justified the one-month extension as a pragmatic response to the circumstances.

The government made proposals to reinvigorate commonhold as an attractive alternative form of property ownership. MHCLG announced that millions of leaseholders will be given a new right to extend their lease by 990 years with a ground rent at zero. Ground rent payable when a leaseholder chooses to extend their lease or become the freeholder will be capped. Prohibitive costs such as 'marriage value' will be abolished. A Commonhold Council will be established to prepare homeowners and the market.

The government unveiled draft rules governing the future use of digital identities to help 'revolutionise' the conveyancing process. The digital identity products allow people to prove who they are, where they live or how old they are. The 'trust framework' comprises specific standards and frameworks for organisations that provide or use digital identity services. Organisations will be required to publish a yearly report explaining which demographics have been, or are likely to have been, excluded from their service and why.

The health minister indicated that government is working on a total overhaul of the 'outdated' system of **clinical negligence compensation within the NHS**. This includes consideration of 'no-fault compensation schemes'. Typically, in these schemes, an expert body will assess whether the injury has been caused by health care, but the patient does not have to go to court and does not have to prove negligence to be eligible for compensation.

A government commissioned review of the competition regime by John Penrose MP outlined options to promote competition in the UK and to improve consumer confidence. This includes proposals to protect consumers from new kinds of rip-offs, and to ensure that they can expect fair treatment, particularly in online transactions. Mr Penrose recommends further work to strengthen and speed up enforcement of consumer and competition law.

Covid-19

Bar Council research found six in 10 barristers, rising to 80% of those doing publicly funded work, have taken on personal debt or used savings to get through Covid-19. 72% had experienced a significant reduction in new fee income – the median reduction was 25-30% – and a quarter had taken on unspecified additional paid work to make ends meet. 18% of self-employed barristers actively wanted to leave the profession. There were signs of recovery, with court work picking up, and workload and fee income gradually returning to normal levels, even though interruption to court work was still the biggest problem.

The government extended the current ban on evictions until the end of March. Exemptions include illegal occupation, anti-social behaviour and rent arrears of six months or more. Landlords must give six months' notice before starting possession proceedings.

David Lammy, the shadow justice secretary, called for **"wartime juries" of seven instead of 12 jurors** until the end of the coronavirus pandemic. Ministers had raised this as a possibility during the first lockdown. The legal profession reacted coolly to the idea.

LawCare reported that **the number of lawyers seeking its help for anxiety rose steeply** last year and demand is likely to grow in 2021. Some 738 legal professionals contacted the service in 2020, 9% more than in 2019. The number of people experiencing anxiety had the biggest increase, rising from 45 to 111. From March 2020, over a third of calls related to Covid-19 and the most common problems cited were stress (23%), anxiety (15%), bullying (10%), depression (10%) and worries about career development (10%). Almost 70% were women and half were trainees, pupils, or had qualified less than five years ago.

The SRA is 'hopeful' the SQE can take place as planned in November. However, the SRA is 'looking closely' at methods of delivering remote assessments.

Top-200 firm Mishcon de Reya has told its staff they are free to work where and when they like – provided clients' needs are catered for. The firm committed to an entirely flexible working pattern for everyone whose job does not require them to be in the office.

Regulatory and wider policy developments

The SRA made new appointments to its board. They are: Ann Harrison, former chairman of north-west ABS Stephensons; Elizabeth Smart, a professor of legal education at Sheffield Hallam University and a director of SHU Law; Vikas Shah, a non-executive director of Southport serious injury ABS Fletchers; and Dermot Nolan, the former CEO of Ofgem.

Caroline Corby is the Professional Standard Authority's new Chair. She is currently the Chair of the Parole Board for England and Wales, and the Chair of One Housing. Caroline was also a Board Member at Cafcass and a Panel Chair for the Nursing and Midwifery Council but stepped down from these roles on assuming her position. Meanwhile, the PSA is consulting on its performance assessment framework and its accredited registers regime.

Douglas Marshall was appointed as Judicial Appointments and Conduct Ombudsman for a period of 5 years. His background is in policing.

The Law Society president has stepped aside from his role after the High Court ruled that the SDT was wrong to throw out a private prosecution against him brought by a former client. Lord Justice Popplewell and Mr Justice Garnham found the SDT's decision in September 2019 flawed both in its analysis of abuse of process and by not properly examining the merits of the case. But though the court found that David Greene has a case to answer, it stressed that it was not reaching any judgement on whether he misled a district judge, as is alleged. The SDT must now convene a fresh disciplinary hearing. Mr Greene strongly refutes the allegations but said he decided to step aside to avoid the case becoming a distraction from him performing his role. The current vice president of the Law Society, Stephanie Boyce, will assume the role of president from 19 March.

A decision that a City law firm partner is too unwell to answer misconduct allegations but well enough to continue working **prompted renewed calls for reform of disciplinary rules**. The

SDT permanently suspended proceedings against a solicitor accused of pressuring an alleged victim of Harvey Weinstein to sign a gagging order. The case prompted discussion on the desirability of a “fitness to practise” regime, which some argue would enable regulators to deal more flexibly with solicitors whose health may be affecting their ability to work before they spiral out of control and end up in disciplinary proceedings.

BSB and BTAS issued a joint statement about the review of BTAS Sanctions Guidance amid concerns that **barristers who have been found to have committed sexual misconduct are treated too leniently**. The starting point for “minor offences of inappropriate sexual conduct in a professional context” is a reprimand and medium-

CMCs will be required to give consumers more information about how the fees they pay will be calculated and better signposting to free alternative routes to redress.

The Danish Competition Authority published a report with recommendations for deregulation largely based on the Legal Services Act. The recommendations include: allowing multi-disciplinary partnerships and non-lawyer ownership of law firms similar to ABS; abolition of ban on sharing fees with non-lawyers; abolition of bans on performance-based price agreements; recommendations that customers should receive offers in a fixed 'standard template'; transparency requirements on law firm pricing; more competition in legal aid; and examination of broadening out legal education.

The New York Bar rejected permitting ABS, at least for now. Its justification was that there is no evidence so far that ABS improve access to justice.

Market developments

A joint venture ABS specialising in dispute resolution for SMEs is launching a new service for law firms which it compares to “a concession in a department store”. Escalate claims to be creating a “completely new model within the legal industry”, one based neither on referral agreements nor on a white-label approach.

Data from Search Acumen shows the **average conveyancing firm completed 21% fewer transactions last year**, although the market rebounded strongly at the end of the year, with transaction volumes up 27% in just one month.

Deloitte Legal has doubled its headcount of lawyers in the UK to more than 170, as 'Big Four' accounting firms continue to put pressure on traditional practices. More than 80 lawyers, including 29 partners, have joined the firm following the acquisition of Kemp Little.

A barrister specialising in civil and criminal tax disputes set up a virtual chambers with the aim of making it the biggest of its kind by the end of next year. Patrick Cannon said there was “little business sense” in paying for a chambers in Lincoln’s Inn which he had visited only twice last year. Mr Cannon said he regarded himself as “a bit of an outlier” by making the jump to a virtual chambers so early on.

Fifteen City law firms teamed up with former education secretary Justine Greening to create a **social mobility action plan for the legal sector**. The partnership will see the firms working closely with universities such as Bradford, Staffordshire, Lincoln, York St John and Liverpool John Moore to create new routes from higher education into the legal profession.

Market intelligence and research

Analysis by LSCP of its annual tracker survey shows a “troubling inequality” between BAME and White British consumers in the way they access legal services has changed little in the last five years. It found that consumers from BAME communities shop around and use online services more and make use of comparison websites more often than White British consumers. However, they feel less satisfied with the choice on offer and experience less positive or satisfactory services than White British consumers.

The BSB published its annual diversity report. This shows a sharp uptick in pupils with BAME backgrounds and continued improvement in social mobility. But Covid-19 has flattened the number of new practising barristers and there were 121 fewer pupillages; this decrease appears to have affected women more than men.

Research commissioned by The University of Law revealed that **just one in five (21%) Asian and 35% of black people feel represented in the legal system, compared to an overwhelming 89% of white people**. Asked to envision a lawyer, nearly half of respondents pictured a lawyer to be white and a quarter expected them to be male, while only a small proportion (6%) expected them to be from a working-class background.

The government published a data compendium to feed into the Independent Criminal Legal Aid Review being led by Sir Christopher Bellamy. According to the report, there were 1,200 criminal legal aid firms in 2019-20, a figure that has dropped by nearly 300 since 2014-15. Over half (57%) of the 2,800 solicitors who left the criminal legal aid firm or market in 2018-19 were under the age of 45. Barristers with up to seven years' practise had the highest leaving rates in 2019-20, which is attributed to lower public criminal fee incomes.

A report by Arden Parnters predicted that firms of legal consultants are set for huge growth and will become the dominant business model in the consolidation of the high street and mid-market. It estimated that around 50,000 solicitors could be working as consultants in just five years' time, with traditional small partnerships a rarity by then. There has been a rapid increase in the number of consultant firms in recent years, offering lawyers a central service platform, brand and management infrastructure from which to operate, in return for a percentage of their billings, typically around 20-30%. Though the number working at firms such as Keystone, Gunnercooke, Taylor Rose and Setfords is just 1% of all solicitors, Arden said it could double every year, "stimulated by the success of remote working during the pandemic and the benefit of significant investment in IT and back-office infrastructure".

Thomson Reuters' annual review of the alternative legal services provider (ALSP) market found it has expanded rapidly in recent years. UK firms used ALSPs less than their US counterparts for most tasks, such as legal research and e-disclosure. The total size of the global ALSP market hit $13.9bn by the end of 2019, an increase of $3.2bn or about 30% over the previous two years. ALSPs operated by law firms, or 'law firm captives', made up the smallest part of the market, but it grew at the fastest rate.

The Financial Conduct Authority published its Financial Lives Survey – the equivalent of the LSB's legal needs research. The FCA found that Covid-19 has had a profound impact on adults' financial situations but has not affected all groups in society equally. Groups that were particularly hard hit include: the self-employed, adults with a household income less than £15,000 per year, those aged 18-54, and BAME adults. Overall, there were 27.7 million adults with characteristics of vulnerability in October 2020, up 15% from February 2020.

A Law Society report predicted helping clients cope with the repercussions of climate change could transform the legal profession. The Society said it would enable lawyers to focus on "proactive risk management advice", knowledge of numerous legal frameworks and "out-of-the-box thinking". "Lawyers will be asked to help their clients identify, avoid and manage physical, liability and transition risks linked to climate change."

Market intelligence and research

CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS

Indicator of success	Source	2013	2014	2015	2016	2017	2018	2019	2020
LSB expenditure	LSB	£4,264k	£4,266k	£3,921k	£3,587k	£3,525k	£3,470k	£3,725k	£3,788k
LSB levy per authorised person	LSB	£27.97	£25.36	£24.71	£21.55	£18.83	£19.00	£20.01	£21.27
Public trust lawyers to tell the truth [O]	LSCP	42%	43%	47% [A]	42% [A]	45%	45%		
Public confident consumer rights protected [O]	LSCP	46%	46%	50% [A]	46% [A]	48%	49%		
Levels of shopping around: Individuals [O]	LSCP	22%	24%	25%	25%	27%	27%	28%	30%
Use of comparison/feedback sites: Individuals [O]	LSCP	1%	1%	2%	2%	2%	2%	2%	2%
Ease of shopping around: Individuals [O]	LSCP	55%	54%	57%	57%	48%	54%	56%	56%
Overall service satisfaction: Individuals [O]	LSCP	80%	79%	78%	80%	80%	84%	84%	84%
Consumers who do nothing when dissatisfied [O]	LSCP	44%	44%	42%	35%	49%	35%	37%	36%
Public confidence in complaining about lawyers [O]	LSCP	44%	45%	48%	43%	44%	45% B		
No action when have legal issue: SMEs [O]	LSB	8%		9%		10%			
Levels of shopping around: SMEs [O]	LSB					22%			
Ease of finding provider: SMEs [O]	LSB			25%		50%			
Lawyers perceived as cost-effective: SMEs [O]	LSB	12%		14%		11%			
UK wide legal services turnover (uninflated)	ONS	£32.5bn	£32.9bn	£35.0bn	£33.4bn	£34.9bn	£36.2bn	£36.8bn	
Number of active ABS	LAs	236	373	618	837	1,091	1,244	1,389	1,413
Level of service innovation (over 3yrs) [O]	LSB			28%			26%		
Regulation seen as barrier to service innovation [O]	LSB			50%			40% A,B		
Net exports of UK legal services	ONS	£4.2bn	£4.6bn	£4.6bn	£5.0bn	£5.2bn	£5.4bn	£5.9bn	
Non-UK litigants using Commercial Court	Portland	71%	77%	63%	66%	72%	59%	60%	55%

KEY: [O] = Survey source, [A] = Significant differences to previous figure, [B] = Significant differences between oldest and newest figure