

News round-up

(covers the period 27 August to 30 September 2022)

Top stories

Government publishes Economic Crime and Corporate Transparency Bill. The bill, which is intended to address money laundering, fraud and breaches of sanctions, would remove any limit on fines the SRA could issue in economic crime cases. TLS has expressed its opposition to the increase in the SRA's fining powers. The bill also includes a new objective for legal services regulators to promote the prevention and detection of economic crime which is intended to make clear that frontline regulators have a duty to enforce compliance with economic crime rules and have the right tools to do so. The Bar Council (BC) opposed the inclusion of the regulatory objective as it is not the role of legal professionals to prevent or detect crime and considers it incompatible with the role of lawyers to advise and represent their clients.

Criminal barristers to vote on Government's revised offer on legal aid funding. The MoJ said the revised offer represented a further £54m of investment for criminal barristers and solicitors. A planned 15% fee increase for criminal barristers will now apply to the vast majority of cases currently in the Crown Court and to fee increases for solicitors. The revised offer also includes £3m for case preparation, £4m for defence barristers involved in pre-recorded cross-examinations, and a £5m uplift for fees in the youth court from 2024/25. An advisory board on criminal legal aid reform will meet next month to discuss further proposals to improve the system for legal professionals and victims. While the CBA will now ballot its members on the Government's new proposal, TLS criticised the offer as it does not provide equal pay for solicitors. TLS said compromising with barristers but not providing parity for solicitors was short-sighted as most criminal defence lawyers were solicitors. If solicitors did not get equal treatment from Government, TLS would advise them not to undertake criminal work. The MoJ said £19m of the additional £54m was earmarked for solicitors and that further uplifts for solicitors would be announced in the coming weeks.

SRA developing further guidance on SLAPPs as it considers they pose a clear danger to the rule of law, free speech and a free press. The new guidance follows that issued in March about 'abusive litigation tactics' being used to stifle valid criticism. The SRA will seek to balance action on SLAPPs with the need to bring legitimate claims.

SRA to replace SIF with in-house scheme. The SRA will launch a consultation on the arrangements and rules for the new scheme in October. The new scheme will include indemnity arrangements for solicitors and the same level of consumer protection as the current one. TLS welcomed the decision, saying it was pleased the SRA's Board had considered the profession's views.

BSB pushes back deadlines for clearing backlogs in handling of misconduct reports and authorisations. While the BSB's productivity had recovered since the cyber-attack earlier this year, the backlogs would now not be cleared before the end of 2023. Reports to the BSB in July and August were up 40% on the same time last year, which meant that the original deadline for clearing the backlogs would not be cleared by the original deadline of October/November.

Political developments

The new ministerial team at the MoJ is as follows: The Rt Hon Brandon Lewis CBE MP (Lord Chancellor and SoS for Justice), Rachel Maclean MP (MoS), Rob Butler MP (PUSoS -Prisons, Probations, Youth Justice), Gareth Johnson MP (PUSoS – Legal Aid, Courts and Tribunals), Mike Freer MP (PUSoS – Constitution and Legal Services), Lord Bellamy QC (PUSoS – unpaid), The Rt Hon Michael Ellis QC MP (Attorney-General), Michael Tomlinson MP (Solicitor-General). TLS said the crisis in the justice system 'should be lighting up the new justice minister's inbox'. The BC said the 'Government must commit to sufficiently funding the justice system' and 'stop the attacks on lawyers that undermine confidence in the rule of law and the UK's legal sector at home and abroad.'

Bill of Rights shelved. The bill, which would have repealed the Human Rights Act 1998, has been pulled while the government reviews 'the most effective means to deliver objectives through our legislative agenda'.

Scottish Government's legislative programme includes legal regulation reform bill. The Scottish Government said it would 'introduce legislation to provide a modern legal services regulatory framework for Scotland, promoting competition and innovation in an efficient and independent legal sector, while placing consumer interests at its heart.

SRA unlikely to act against solicitors convicted in protests where no significant harm was caused. While the SRA would have to consider cases which resulted in criminal convictions, these would not automatically result in disciplinary action or admission to the roll being refused. The SRA's guidance said 'where a conviction arises from...principled action or participating in a peaceful protest and that conviction does not involve a significant risk of harm to the public and/or material risk to property, it is unlikely to result in...regulatory action. Apart from risk of harm to the public or property, other factors which could lead to the SRA acting include undermining the rule of law or administration of justice, abusive conduct and failure to cooperate with the legal process.

ICO reviews complaint from CBA as to whether the Justice Secretary made a 'direct request' for striking barristers' names. The ICO is considering whether the MoJ unlawfully processed barristers' personal data.

Backlog of criminal cases continues to grow. Lawyers have said that tackling the backlog of approximately 400,000 cases in the Crown Court would require a large cash injection as well as radical changes in the Government's approach. Dame Vera Baird, KC, the Victims' Commissioner, has not sought to extend her term because of the 'chaos' in the criminal justice system, lack of actions on victims and failure to tackle the backlog. **Labour urges immediate rights extension for associate prosecutors (APs) to reduce backlog in criminal cases.** Shadow AG Emily Thornberry said APs were not being used to the maximum extent because of an 'unnecessary and outdated legal restriction'. APs are CILEX members and the current and previous Lord Chancellors have previously committed to working with CILEX to enable APs to apply to be Crown prosecutors.

Latest Government figures on time taken to get civil cases to trial. The average time between issue and trial for fast and multi-track claims has reached 75 weeks despite volumes for all civil actions remaining below pre-pandemic levels. This compares to a pre-pandemic (2002-2019) average time of between 52 and 59 weeks before the length increased during the pandemic. The Government said measures introduced to help with small claims, like mediation and neutral evaluation, were not reflected in the figures when they were successful. This meant that the final cases used in the timeliness figures included a disproportionate number of more complex cases.

SRA sponsors fringe event at Labour Party conference. The event, organised by the Institute for Government thinktank, was entitled 'Levelling up or left behind: what role should regulators play?' At the event, Benedict Fisher, the SRA's Director of Communications, said promoting access to justice was one of its regulatory objectives, and that it was exploring how technology and innovation could help. Participating in a panel discussion about 'levelling up' did not mean the SRA favoured any political party's agenda, but it was important to consider legal regulation's role in this area.

Labour Shadow Justice Secretary says increased diversity in the judiciary needed to maintain trust in the justice system and argues for more transparency in the judicial appointments process. Separately, the Judicial Appointments Commission has announced it will revise its approach to statutory consultation. **Judicial Office is also offering seminar to solicitors interested in applying for deputy district judge posts** to support their preparation.

Regulatory developments

Former head of LawtechUK says regulatory rules should be included in in-house lawyers employment contracts. Jenifer Swallow said recent corporate scandals had highlighted tensions between the requirement for in-house lawyers to be independent and their status as employees. One way to respond to these concerns would be to include in-house lawyers' regulatory obligations in their

employment contracts. Ms Swallow noted that the SRA was carrying out a thematic review of the role of in-house lawyers.

Professor Stephen Vaughan of UCL says that lawyers are not “neutral technicians” and “cannot hide from responsibility for what clients do with the legal advice they provide”. Professor Stephen Vaughan called on lawyers to ask “hard questions” of their employers, use their expertise in the public interest and have “moral courage”. Professor Vaughan also said the ‘pursuit of profit was never the single purpose of the legal profession’ and that changes to how the profession is regulated have challenged the traditional model of being a lawyer.

TLS’s annual report shows record number of solicitors on the roll with 209,215 registered on 31 July 2021, up nearly 7,000 on 2020. Around 50% of solicitors have law as their first degree, and the number of students graduating from first degree law courses has steadily increased during the last decade. The number of women with practising certificates has also risen, from 78,256 in 2020 to 80,881 in 2021. Women now make up 53% of the profession, up from 47% in 2013 but are only 32% of partners. The number of Black and Asian solicitors is slowly increasing. The in-house sector is growing and now represents around 25% of the profession.

SRA issues new guidance on sexual misconduct in law firms which sets out what the regulator expects from firms and individuals and illustrates the types of behaviours that are unacceptable and may lead to regulatory action. The guidance includes several illustrative examples about when a solicitor’s regulatory obligations apply to both their professional and private lives. Complaints about sexual misconduct at law firms have increased eightfold since the SRA’s 2018 warning notice with 251 reports of sexual misconduct registered since 2018. The SRA recently said it was investigating 117 cases of alleged sexual misconduct.

SRA rejects legal press request to reopen board meetings to the public and press. SRA CEO Paul Philip said the SRA’s current approach was the right one to provide the public with access to useful and clear information about the work of its board and that public board meetings were ineffective in providing that information and insight. He noted that other significant organisations in the legal sector, and more widely, had decided against holding public board meetings. SRA board meetings were held in public until 2017.

Kaplan offers more January 2023 SQE1 testing slots in response to high demand. The extra slots will be available in the London area. The increase follows complaints from students that when the booking portal opened, they were unable to secure a slot for the January 2023 exams either near where they live or not at all.

BSB appoints second Independent Reviewer. Sarah Balham will work alongside Veila Soames to provide: independent assurance to the BSB’s Governance, Risk and Audit Committee that the BSB’s regulatory decision-making functions are complying with agreed procedures, independent reviews of individual case

decisions, and regular reviews of random samples of cases and decisions to check that outcomes are fair and consistent.

Following a consultation with its Race Equality Taskforce, the BSB has stated its new approach to the use of racial terminology. Under this approach, the BSB will seek to be as specific as possible when describing different ethnicities and where possible, will disaggregate data into specific ethnic and racial groups. It will no longer use BAME or BME or terms such as ‘non-white’ or ‘non-traditional background’. Where collective language cannot be avoided, it will use terms such as ‘racially minoritised’ or ‘minoritised communities’.

The BSB plans to publish a statement of consolidated good practice for chambers, which sets out minimum regulatory requirements and how to go “above and beyond” them. The BSB will gather views as to whether chambers which exemplified good practice should be recognised via a quality mark or awards scheme.

CLC proposes requirement for licensed conveyancers to treat customers fairly in a proposed statement of ethical principles. The CLC’s consultation on the statement, which includes expanding the principle on EDI to cover the workplace as well as clients, will close on 15 October. It seeks views on the CLC’s proposed strategic objectives for 2023-2026, which include attracting conveyancing and probate specialists from across the legal professions to CLC regulation.

LSCP says SRA and SDT decisions to suspend solicitors should stay in the public domain for three years after the solicitor returns to work. The LSCP also said referrals to the SDT should be published immediately rather than once the SDT certifies the case. The full text of regulatory decisions should also always be published along with summaries of the facts.

ICO warns public bodies it will act against those failing to respond to FOI requests within the deadline.

CILEX private client firm transfers to SRA. Louise Bunn, Director of LB Wills & Probate, moved her firm to the SRA because of CRL’s consultation on CILEX firms switching their client accounts to third-party managed accounts (TPMAs). The firm said such a move would increase its banking costs from £168 to £6,000 per year. CRL’s proposal was prompted by it failing to find an indemnity insurer to back its compensation fund last year. CILEX firms moving to TPMAs would remove the need for such a fund. Despite moving her firm to the SRA, Ms Bunn was strongly opposed to the SRA regulating legal executives.

Market developments, intelligence and research

The legal sector continued to grow in July with turnover up 2.2% on the previous month. This was better than the overall service sector, which saw turnover drop 6% from June. A sharp decline in global M&A activity and a difficult overall economic outlook are expected to affect the legal sector.

Insurance specialist firm Horwich Farrelly develops automated injury recognition system (AIR) to sift high-value personal injury claims from low-value ones. AIR was part of the firm's online litigation triage system, which Horwich Farrelly offers free to insurers in the hope they will instruct it for litigation.

Post-Brexit trade deals leave 'significant barriers' in place for digital trade to and from the City of London. The Corporation said FTAs with Australia, New Zealand and Japan had been affected by a lack of engagement from officials and the numbers of carve-outs and exceptions. The Corporation said lack of cooperation between regulators and limited sharing of information between markets were key barriers to digital trade in the UK.

SRA reveals initial unbundling research findings, which show that: awareness of unbundling is low amongst both firms and consumers, and unbundling suits those consumers with higher legal confidence and capability and a particular level of earnings, which aligns with expectations that higher earnings might coincide with greater confidence and capability. Some firms were concerned unbundling could raise their PII premiums or increase negligence liabilities.

SRA reports a sudden spike in law firms facing financial difficulties. The SRA, which has been monitoring firms' financial stability for the past two years in the light of PII increases and the pandemic, said it was only in the last month that there had been a significant increase. It was looking into the reasons for the spike, which may include the removal of Government Covid support and cost-of-living crisis.

SRA publishes research on female solicitors' experience of maternity leave. The research found 20% of female solicitors were promoted into a new role by their firms during or after maternity leave, but the same proportion 'felt unwelcome' on their return to work. The study was based on responses from 554 solicitors who had taken maternity leave, a survey of 29 law firms' maternity policies and an in-depth review of 'best practice' at 17 firms. Many of the women who returned to full-time work said they were concerned that working part-time would affect their career.

LawCare urges SRA to consider wellbeing of those facing disciplinary action. In response to the SRA's consultation on its disciplinary publication policy, LawCare said disproportionate publication runs the risk of unduly tarnishing the profession's reputation and unnecessarily amplifying concerns. Lawyers involved in formal disciplinary processes were often vulnerable and the impact on their mental health of disciplinary processes and their publication was not fully recognised.

The IBA's Legal Policy & Research Unit has created a series of podcasts covering the UN Sustainable Development Goals and looking at the global legal community's role in meeting this agenda. The series covers ESG challenges such as gender diversity, mental wellbeing, legal tech, and the rule of law. **An Association of Corporate Counsel study** shows that almost 25% of chief legal officers now have responsibility for ESG (an increase of 9% since 2020). This increase has resulted from pressure from clients, investors, consumers and campaigners.

'Lawyers for 1.5C' call for new obligations on lawyers to advise clients about environmental impact of their business. The group argues that lawyers who

support transactions which may increase climate change may expose themselves and their clients to substantial legal risk, as well as the threat of climate change. **TLS has said solicitors and law firms need to prepare for the consequences of the climate crisis** and contribute to the drive to reach net zero. TLS is preparing guidance on taking climate change into account when providing legal services.

National law firm TLT sets an aim of achieving net zero greenhouse gas emissions by 2040, which has been verified by the Science Based Targets initiative. Other firms setting similar science-approved goals include Pinsent Masons, Eversheds Sutherland and Burges Salmon

EU to impose regulation and fee caps on litigation funders. An EU report published over the summer said 'soft' law approaches such as those taken in the UK, where regulation is voluntary, have proved ineffective. The report found funders regularly demanding excessive returns leaving claimants with no proceeds and that arguments that litigation funding promoted access to justice were not supported by evidence. Only strong legal safeguards would prevent 'actors seeking profit maximisation at the expense of claimants' which the report said had been experienced in the US, UK and Australia. Lawyers and litigation funders said the EU proposals would limit legal sector growth and access to justice.

BC report says almost 90% of self-employed barristers on Government legal panels are white. The BC urged Government to address the issue. Only 3 out of 77 panel silks are not white. Black barristers are only 1.5% of the over 3000 panel barristers.

TLS launches EDI framework to help legal workplaces deliver a strategic approach to diversity and inclusion. The framework is intended to help workplaces establish long-term approaches that deliver lasting change as concerns about diversity can lead to measures which require significant effort but are reactive, short-lived and improperly resourced or recognised.

Siofra O'Leary elected first female President of the European Court of Human Rights. Judge O'Leary has served as Ireland's representative on the court since 2015 and has been Vice-President of the Court since January 2022.