

News round-up

(covers the period 1 October to 9 November)

Top stories

New ministerial team: The Rt Hon Dominic Raab MP (Deputy PM, Lord Chancellor and SoS for Justice), The Rt Hon Edward Argar (MoS) MP, The Rt Hon Damian Hinds MP (MoS), Mike Freer MP (PUSoS), Lord Bellamy KC (PUSoS – unpaid), Victoria Prentis MP (Attorney General), Michael Tomlinson MP (Solicitor General).

TLS responds to settlement of criminal barrister dispute. TLS said it would advise its members not to undertake criminal defence work unless the Government offers the 15% uplift for solicitors recommended by the Bellamy review. Of the additional £54m offered by the Government, £19m is earmarked for solicitors, but TLS says this is a one-off which will not increase rates in the long-term. The London Criminal Courts Solicitors' Association said the uplift would only amount to a 9% increase for solicitors. TLS said the exodus of solicitors from criminal defence was not a temporary problem. The Government said further uplifts for solicitors and other parts of the legal profession would be announced at the end of November in the Government's response to the Bellamy review.

Criminal barristers vote to accept legal aid deal and end strike action. The CBA said 57% of 2,605 barristers voted in favour of the Government's revised offer, which will see a 15% uplift apply to the majority of cases already in the Crown Court. Under the Government's previous offer, the uplift would only have applied from 1 October. The CBA said the underfunding of the criminal justice system which had led to barristers striking still needed to be addressed, and barristers would be balloted on resuming strike action if the Government failed to stop the criminal justice system 'tipping over the cliff edge'. The Bar Council and Government both welcomed the end of the action. CILEX urged the Government to implement the Bellamy review's recommendations that CILEX lawyers should be able to act as duty solicitors.

Government planning to conduct review of civil legal aid. The Legal Aid Agency announced it was extending 2018 standard civil contracts until 31 August 2024 so it could consider the findings of the MoJ's planned civil legal aid review. TLS welcomed the review but said the Government would need to consider how to support firms during it. The Legal Aid Practitioners Group said action was needed now and criticised the prospect of a drawn-out review.

Economic crime bill passes second reading. Although the vote allows the bill to move on to its committee stage, MPs from all parties have argued the Government should back up the new powers with more resources and create new offences to hold executives to account. Several said the bill should include a 'failure to prevent' offence. The bill would still remove the statutory cap on the SRA's fining powers for economic crime matters. TLS has argued that a similar increase in FCA fining powers had not aided the fight against financial crime. **Separately, the HoC's Justice Committee** said the Government and judiciary should pilot specialised

economic crime courts to tackle the increase in fraud. The Government has two months to respond to the Committee.

Opening submissions to the Post Office Horizon Inquiry focused on lawyers and other professional advisers engaged by the Post Office, with solicitors for the sub-postmasters saying the legal response to facts spelt out at the time was 'catastrophically inadequate'. The SRA issued a statement saying it will need to wait until the inquiry is completed before taking formal action against solicitors as the inquiry will not provide the SRA with evidence without an undertaking from the SRA as to how it can be used. A working paper from the Exeter University Post Office scandal project suggested an earlier independent review of the case conducted by Jonathan Swift QC was too credulous of information from the Post Office and Fujitsu.

Political Developments

Government launches a free legal advice pilot in Manchester and Middlesbrough. The pilot expands legal aid funding to people who would previously not have been eligible for free advice. It aims to ensure people get the advice they need to quickly resolve their problems and prevent them spiralling into further difficulties. After the 5-month testing phase, the MoJ will review the evidence collected and use it to design a future larger pilot. TLS research has shown many people do not have access to legal aid providers.

Government announces funding for free legal advice for domestic abuse victims and tenants facing eviction. Domestic abuse victims will be able to obtain legal advice under new protection orders and notices. However, these measures will not be implemented immediately but following a 'future pilot'. Funding for additional legal advice for tenants will come into force next August

UK law firms banned from providing transactional legal advisory services to Russian clients. The addition to the sanctions regime followed the Russian annexation of four Ukrainian regions. IT consultancy, architecture, engineering, advertising and auditing services are also covered by the new sanctions. Legal services were deliberately excluded from the first ban in May. **However, legal services providers will be exempt under the proposed Foreign Influence Registration Scheme** from requirements to register as agents of a foreign power.

Government plans to extend coverage of small business regulation exemptions to businesses with fewer than 500 employees. Unions said such firms could be exempt from reporting on gender pay gaps and executive pay ratios.

Welsh Government looks to 'declutter' statute book. Mick Antoniw MS, Welsh Counsel General, announced legislation to tackle the 'disorganised state of our vast and sprawling statute book' to improve the accessibility of Welsh Law. The proposed bill would remove unnecessary provisions from the Welsh statute book and clarify the extent to which legislation is applicable to Wales.

Government still trying to accede to Lugano convention. Mike Freer MP, PUSoS for Justice, said it would be a slow process. Expanding UK legal services exports was an important part of the Government's growth strategy. The Government would

check that promises in trade deals with other countries to open legal markets were being honoured.

Government postpones publication of plans to allow Ministers to overrule City regulators. City Minister Andrew Griffith MP said the Prime Minister wanted more time to understand the plan's details and take account of comments on it. Regulators warned the power would undermine their independence and weaken confidence in the City of London. Opposition MPs said the proposal should be dropped.

Skills Minister Andrea Jenkyns MP says Rwanda asylum seeker relocation plan was brought to a halt by 'anti-British activist lawyers...' TLS President Lubna Shuja said 'immigration lawyers who ensure British laws are upheld in British courts are protecting British values' and called the minister's remarks 'deeply irresponsible'.

Bill of Rights expected to resume passage through Parliament. The bill, which was shelved while Liz Truss was Prime Minister, is currently awaiting a second reading in the House of Commons. The bill received criticism from MPs including former Lord Chancellor Robert Buckland KC MP, who said it risked creating a range of domestic rights inconsistent with the English common law tradition.

Regulatory Developments

CLC tells law firms it regulates to prepare for sharp downturn in work. Firms should 'stress test their businesses for resilience' in anticipation of a fall of up to 40% in work volumes. It will ask the 230 firms it regulates about their preparations in its regulatory questionnaire next month. CLC said some firms were reporting property transaction volumes were already falling.

CLC renews push to attract firms from other regulators. The regulator will step up its efforts to encourage firms and lawyers from other parts of the legal profession to switch to it. The CLC did not expect a rush of property and probate practitioners to move, but it was seeing a slow but steady increase in switching.

SRA Chair Anna Bradley says that moving to a single legal regulator is a 'live conversation' in Government and Parliament. SRA CEO Paul Philip agreed but did not consider that this would happen quickly due to a lack of legislative time.

SRA concerned cost of living crisis may force small firms out of business. SRA CEO Paul Philip said that in previous downturns some firms might be tempted to dip into their client accounts to pay bills. In September, the SRA had reported a sudden spike in the number of firms of all sizes reporting financial problems.

SRA consults on arrangements and rules for SRA-run SIF replacement. The regulator is seeking feedback on its proposals for the new indemnity scheme, which is due to replace SIF from September next year. The consultation will run until 3 January 2023. TLS has welcomed the proposals in principle. The majority of respondents to the SRA's earlier discussion paper supported retaining SIF. The SRA says its replacement scheme will save around £500k per year.

Results for second round of SQE1 exams have same pass rate as the first but ethnicity attainment gap still present. Once again 53% of candidates passed in the July round. The historical pass rate for the LPC was 58%. The pass rates for various ethnic groups were as follows: White 63%, Mixed 58%, Asian/Asian-British 54%, 23% for Black/Black British and 41% for 'Other'. The biggest changes in pass rates from the first round in November 2021 were for Asian/Asian British (up 11%) and Black/Black British (down 16%). The subject where candidates performed worst was ethics.

SRA exempts junior lawyers from obligation to report on mistreatment of workplace colleagues. Under new rules, law firm managers will have a regulatory obligation to challenge colleagues who treat others unfairly or without respect. The SRA is also extending this obligation into some work social situations. **Separately, the SRA Board also approved rule changes relating to solicitors' health and fitness to practice**, including making it explicit that fitness to practice includes meeting the obligations of a regulated professional, not just carrying out work. The SRA said it would not act simply because a solicitor has a health condition, nor would solicitors have to prove fitness to practice when renewing practicing certificates.

SRA intends to make full use of a proposed new power to issue unlimited fines against solicitors and firms involved in economic crime. TLS has argued against removing the cap. **Separately, the SRA made 20 suspicious activity reports covering £149m of potentially criminal funds** to the National Crime Agency last year. The SRA increased its supervision last year with 163 inspections and 109 desk-based reviews of firms. The SRA said there was a small minority of firms that did not take their AML responsibilities seriously. Over half of firms' AML policies reviewed by the SRA needed improving.

BSB says significant number of chambers do not know if their barristers have declared they are subject to the money laundering regulations (MLRs).

Chambers should know whether their barristers were doing work covered by the MLRs, so clerks could have the right controls in place when dealing with clients. In its annual AML report, the BSB said 27 of the 247 chambers it selected to complete returns declared they did relevant work, but 11 of these did not have oversight of their barristers' declarations. The BSB strongly encouraged these chambers to monitor their barristers' declarations.

Report from campaign group Spotlight on Corruption says law firms continue to display 'significant levels of non-compliance' with AML rules. It said the SRA should enforce AML across the whole of the UK legal sector because of its size, independence and its record of enforcement action.

BSB publishes report on steps it plans to tackle bullying and harassment at the Bar. The report says the onus is on the Bar to change its culture. It found bullying and harassment at the Bar was prevalent and under-reported. The BSB said victims of bullying and harassment who do not report it will not face regulatory action and it will provide information about when bullying and harassment should be reported and how it will handle such reports. As reports are more often made to

chambers or employers than the BSB, it will look at strengthening the role of equality and diversity officers in these bodies. The BSB also published its new equality strategy.

Italian lawyer removed from solicitors' register in 2013 called to Bar. Gabriele Giambrone, who was found to have committed multiple breaches of the Solicitor's Code of Conduct and is listed on the Solicitor's Register as 'prohibited', was admitted to the Bar. The BSB relies on overseas lawyers to disclose their disciplinary records. Giambrone says he disclosed his disciplinary record to the Inns of Court. The BSB is understood to be reviewing the circumstances of his qualification.

CLSB publishes outcome of consultation on Costs Lawyer Qualification regulatory arrangements. It will proceed to implement the qualification framework as proposed in its Scheme Handbook, subject to some amendments following the consultation. Implementation of some aspects will require LSB approval.

FCA proposes rule changes to tackle 'greenwashing' and control use of terms such as 'green' and 'ESG' in financial marketing. It has recommended establishing three types of 'green' fund and requiring asset managers to validate sustainability claims in marketing materials. **ICAEW publishes ESG guide** which sets out the latest thinking and best practice to help businesses, advisers and investors consider ESG issues.

Professor Steven Vaughan of UCL says lawyers should actively advise clients on their environmental impacts. The obligation to act in a client's best interests meant lawyers should be thinking about more than just 'getting the deal done' and should consider the increasing risks from environmental harms.

Brabners becomes third UK law firm with B Corporation status. The North-west practice has become the largest firm with B Corporation status. B Corporations are for-profit businesses that 'meet the highest standards of verified social and environmental performance, public transparency and legal accountability to balance profit and purpose. The firm said sustainability was an important issue for its clients, and its status was helpful with recruiting young lawyers. The other two UK law firms with B Corp status are Bates Wells and Radiant Law, both in London.

LeO confirms changes to its Scheme Rules will come into force on 1 April 2023. A key change in the new rules is the reduction in the time limit for referring a complaint to LeO to one year from the date or action complained about or one year from when the complainant should have realised there was cause for complaint. LeO said firms should ensure information provided to their clients reflects these changes.

LSCP report calls on regulators to agree a format for pricing common services to help consumers make comparisons. It identified conveyancing services pricing and complaints information as most in need of standardisation.

LSCP report shows 5% yearly fall (from 93% to 88%) in satisfaction levels among users of conveyancing services. The report also showed the number of consumers shopping around for conveyancing had risen 10% in a year to 48%, which was the biggest increase compared to other legal services.

Supreme Court refuses permission to appeal ruling that a barrister who sat as a Nursing and Midwifery Council tribunal Supreme Court was a ‘worker’ and entitled to sickness and holiday pay. The Supreme Court said the case did not raise an arguable point of law. The ruling means tribunal members and chairs could be entitled to holiday pay and worker protections.

Market developments, intelligence and research

FSB survey shows small firm confidence significantly down as a result of the increased cost of living. Net confidence was down 11.2 points to 35.9 in the three months to October. The FSB said there was an increase in firms relying on debt to generate cashflow. **A separate poll by tech firm Codat** showed 55% of UK SME owners had taken out a personal loan to finance their businesses. 72% of firms polled said the costs and administrative burdens of securing external funding meant they were unlikely to apply for external finance next year.

LexisNexis Gross Legal Product Index suggests the market for corporate, commercial and competition work likely to “cool substantially” in 2022 and 2023 due to inflation, possible recession, regulations and sanctions. 2021 had been an exceptional year, and LexisNexis predicted demand for corporate law would decline by 22% in 2022 and only grow by 1% in 2023. Commercial law demand remained steady in 2022 and was likely to rise by 4% in 2023. The competition law sector was expected to grow by 17% in 2022 with a further 32% increase predicted for 2023 in part because of the UK’s departure from the EU.

Association of Consumer Support Organisations (ACSO) found no appetite among consumer law firms for an accreditation scheme or other recognition of their transparency. While a transparency mark suggested by the CMA could benefit consumers, it would need to be widely recognised and easily differentiated from other accreditations. The current patchwork of law firm quality schemes was not helping consumers. ACSO said schemes should focus on quality rather than price. The single online register envisaged by the LSB may help but would ideally include the unregulated sector. ASCO also said existing quality marks should be enhanced and not replaced by a sector-wide one.

Nineteen major City firms pledge to ensure legal apprentices are treated equally with employees on training contracts. The pledge commits them to demonstrate that the apprenticeship route is as valid as the traditional one. CILEX welcomed the pledge but wanted equal treatment for specialist CILEX lawyers.

LSCP says many ethnic minority consumers of legal services do not feel they are being listened to or understood by lawyers. The qualitative study found ethnic minority consumers were less likely to feel communications were easy to understand, less satisfied with outcomes achieved and less likely to trust law firms. Cultural and language barriers and legal jargon could lead to some ethnic minority consumers perceiving lawyers lacked empathy or understanding of their needs.

1% Study report shows only 1% of the 13,403 partners in major UK law firms identify as Black. 90% of partners at these firms identify as White with 5%

identifying as Asian. The study, conducted by Extense and endorsed by TLS and the Black Solicitors Network, looked to learn from the experiences of the 1% of partners who are Black and identified five key actions to encourage greater Black representation at the partner level: (1) tying executive compensation to diversity and inclusion outcomes, (2) providing supervisor-focused training to improve inclusive line management capability and confidence, (3) addressing work allocation bias using technology and people-based solutions, (4) instigating formal sponsorship programmes to target underrepresented talent, and (5) deploying target equitable support and career development

University of Manchester's Racial Bias and the Bench survey of legal professionals says racial bias played some role in the justice system's processes or outcomes. The report recommends the Lord Chief Justice and judicial leadership acknowledge the justice system is institutionally racist, compulsory racial bias and anti-racism training for all judges, overhauling the judicial appointments process and ensuring all hearings are recorded and accessible. In response, the LCJ said the Judicial Executive Board has been working to address the problems identified in the report and would take it into account.

Judicial Office research reveals examples of bullying, harassment and discrimination by judges. The qualitative study also found examples of behaviour that would not be classed as bullying but could have an adverse effect on those who experienced it. The study found positive aspects of the judiciary's culture and examples of inclusive working practices by leading judges. The judiciary has agreed on actions to foster a more inclusive culture. A mediation service has been set up to help informally resolve disputes between judicial office holders.

TLS analysis shows that at current rates of change it will take until 2149 for the number of Black judges to match the percentage of Black persons in the population. Although the proportion of female and Asian judges is rising, the proportion of Black judges has only risen to 1.09% from 1.02% since 2014 and at this rate it will take until 2149 to match estimates for the percentage of Black people in the population (3.5%). On current trends, half of all judges will be female in a decade and 8% will be Asian by 2033, in line with the overall population.

Bar Council report finds women barristers closing the pay gap with male colleagues, but a large gap remains in higher-earning areas of work. Self-employed women barristers' average gross fee earnings increased by 6% last year, while those for male barristers decreased by 5%, but women still earned 34% less than men overall. The BC emphasised the need for chambers to fairly distribute work to help address the earnings gap. **Separately, research from the Next 100 Years project** said 84% of women in the legal profession who have children do not get the support they need to balance work with childcare, and half believe they are treated differently at work to men with children.