News Round Up

(covers 9 November 2022 to 6 January 2023)

Top stories

Government publishes final response to Bellamy criminal legal aid review and announces £138m of funding. While the review had recommended an immediate 15% uplift in fees, the Government's package will provide a total fee increase of 11%. TLS said the MoJ's decision 'reckless' and the package amounted to a real terms cut in fees. It has warned students considering becoming criminal solicitors that they are now 'highly unlikely' to earn a 'reasonable' income. The Bar Council also criticised the funding package as failing to address the risk of barristers leaving criminal work. **MoJ announces start of civil legal aid review**, which will cover all types of civil legal aid provision and consider value for money and MoJ budgetary constraints. The review's final report will be published in 2024, but TLS and the Bar Council called on the Government to increase legal aid funding now.

MoJ faces a real terms spending cut. Following the Autumn statement, the MoJ's day-to-day budget will increase by 4% from 22/23 to 23/24 (£9.4 to £9.8bn) but only by 2% from 23/24 to 24/25 (£9.8bn to £10bn). Its capital budget will increase by 35% from £1.7bn in 22/23 to £2.3bn in 23/24 before falling to £1.5bn in 24/25. The OBR predicts an inflation rate of 7.4% in 23/24.

Government promises three-part test to stop SLAPP cases. The test, which would allow for the early dismissal of cases, will be introduced in upcoming legislation. It will involve consideration of the public interest, lack of merit and features of abuse of process. **Separately, the SRA has published a new warning notice on SLAPPs** saying regulatory action is likely to result from behaviours that seek to threaten or advance meritless claims including claims where it should be clear a defence will be successful based on what the solicitor knows. The SRA is also seeking designation under whistleblowing legislation so lawyers can directly report law firms engaging in SLAPPs. It is also conducting a thematic review on how firms address abusive legislation techniques. The SRA is looking at 29 SLAPP allegations. The BSB is also considering issuing SLAPP guidance.

The Scottish Government to introduce a two-tier system for legal service regulators. First-tier regulators would be those with a significant membership or whose members provide consumer-facing services. These regulators would have to delegate their regulatory functions to an independent regulatory committee. The Law Society of Scotland already does this. Second-tier regulators, ie those with smaller memberships who do less consumer-facing or more specialist work would not have to delegate their regulatory functions to an independent committee.

Political developments

UK Government announces 555 postmasters that were part of the first legal action against the Post Office can start preparing their compensation claims. The Government will pay each claimant £900 for their legal fees. The scheme, run by BEIS, is intended to settle cases without going to court.

TLS says the Retained EU Law (Revocation and Reform) Bill could have a devastating impact on legal certainty in the UK. It said the proposals would allow ministers to change UK law without appropriate parliamentary scrutiny or public oversight and therefore raised questions about parliamentary sovereignty, legal certainty, the rule of law and the global reputation of English law.

TLS warns Bill of Rights could drive large law firms out of the UK. It noted 'growing disquiet' among large law firms because of its potential to create 'legal confusion and uncertainty' about the interpretation and future application of long-established contractual provisions, and arrangements and consequently damage the UK's attractiveness as a place to do business.

MPs back tougher economic crime fines and oversight for lawyers. MPs have backed giving the SRA unlimited fining powers in economic crime cases, as well as a new regulatory objective for the LSA 2007 requiring regulators to promote the prevention and detection of economic crime.

The UK Government's financial sanctions regime now includes a ban on trust services to Russia. These services can now only be provided to persons connected to Russia if they were provided immediately before the new rules came into force (16 December) or to a designated person.

Herbert Smith Freehills partners raise concerns about 'foreign influencer' regime in National Security Bill. They argue that the proposals are wider and more onerous than their equivalents in the US and Australia.

US passes law banning NDAs in sexual harassment cases. The Speak Out Act will invalidate NDAs that force workers to remain silent about sexual harassment or assault at work. The Act will apply only to NDAs signed prior to the harassment occurring. In the US, such NDAs are often included in mandatory HR forms signed by newly hired employees and bind over one-third of the workforce.

Regulatory developments

BSB struggles to hit targets for enforcement work. The total number of barristers reported to the BSB increased 17% in 2021/22 according to its annual report. Only a third of the BSB's investigations reached the decision stage within its 25-week target. The times for closing investigations and cases at tribunal being concluded also increased. There were more complaints about barristers' behaviour in work and fewer about behaviour outside of work. Complaints relating to social media almost doubled. BSB is looking to add a small number of staff to its enforcement team to handle the increase in social media-related misconduct.

BSB consults on 5% increase in PCF to overcome retention and recruitment duties. The increase would have been 9%, but the BSB intends to offset this with reserves and money for its pension scheme deficit. The BSB received independent advice that its pay levels were almost 20% below the median benchmark for similar roles at other regulators. The Bar Council asked the BSB to provide evidence that pay was the main cause of its recruitment and retention difficulties.

Bar Council Chair Market Fenhalls KC said the BSB should tell the LSB to stop making overreaching demands, so that the BSB can focus its efforts on dealing more with its 'core' responsibilities and less with 'peripheral issues'. He also said the LSB's operation should be reviewed by Government.

BSB apologises to Dinah Rose KC over handling of complaint against her. Ms Rose had been reported for acting for the Cayman Islands government and arguing its constitution did not confer a right on same-sex couples to marry. The BSB published a press release saying the cab-rank rule did not apply in this case, as Ms Rose had been instructed by a foreign lawyer. The BSB also said Ms Rose had been potentially 'reckless' about the cab-rank rule's operation but decided not to take any regulatory action. The BSB then published a further statement saying Ms Rose had correctly understood the cab-rank rule and acted in accordance with it, and that criticisms of her were misplaced.

There is a significant attainment gap between providers of the Bar training course, ranging from a pass rate of 94% at the highest (the Inns of Court College of Advocacy) to 49% at the lowest (BPP's Birmingham, Bristol and Leeds branches). The BSB said the extent to which a course provider 'recruits diversely' could impact its results. Candidate success was linked to degree results with 84% of students with first class degrees, 65% of those with 2.1 and 39% with 2.2s passing the course. The BSB said providers recruited too many students who had no hope of passing the course or obtaining pupillage, but that raising the entry requirement may increase the difficulty that those from disadvantaged backgrounds already faced.

CLC freezes practising fees to encourage lawyers to switch. The CLC's individual licence fees for either conveyancing or probate will stay at £400 with fees for CLC lawyers doing both staying at £475. The CLC collects the levy for the OLC separately from its practising fees.

CLC consults on new CPD requirements. The proposals include a move away from an hours-based approach to a outcomes-based one and a new requirement on regulated entities about their lawyers' ongoing competence.

SRA data shows client losses from cyber-attacks on law firms continue to fall. Losses totalled £700k in the first 10 months of 2022, compared to £2.3m for the whole of 2021 and £10m in 2017.

Joint Five Law Societies express 'deep concern' about SRA's plan to replace SIF with its own indemnity scheme. The Birmingham, Bristol, Leeds, Liverpool and Manchester societies said the SRA had not consulted on other options and that its proposals were based on limited data and unreliable predictions of savings. **Conversely, TLS gave a cautious welcome to the SRA's plan** as it would protect consumers' ability to claim compensation many years after a solicitor had provided advice. TLS was concerned that any new arrangement should: be an indemnity scheme which could be funded by a levy on firms, provide the same scope of indemnity cover as SIF currently does and ring-fence any residual funds from SIF for dealing with PSYROC claims. TLS also wanted more detail about the proposed removal of its power to appoint arbitrators in the event of a dispute.

OFSI and NCA actively investigating law firms for sanctions breaches. The number of firms involved is understood to be small. OFSI said there was a small minority of firms actively trying to help designated individuals avoid sanctions, while a larger minority were negligent or not putting in place the measures needed to identify sanctioned individuals and entities.

SRA publishes new sanctions guidance setting out expectations for solicitors and firms. The new guidance stresses that financial sanctions compliance goes beyond anti-money laundering, sets out warning signs that a client may be seeking to evade the rules and sets out could practice on due diligence checks. Firms are under a duty to report to OFSI if they discover a client is a designated person. **The SRA has also noted several instances where banks have refused to process transactions for sanctioned persons even though their solicitors were licensed by OFSI.** The SRA said having an OFSI license permits certain actions but does not compel third parties to take or facilitate them. Solicitors acting for sanctioned clients should consider this before providing services. It also noted that sanctioned persons should be warned that a firm's indemnity insurers may not pay any claim they might make against it, as the insurer would need its own license from OFSI to do so.

SRA uses enhanced fining powers for first time to impose a £15,000 fine on a solicitor who failed clients subject to deputyship orders. The SRA published a short notice explaining why the fine was issued.

TLS opposes SRA plans to raise upper limit on fines it can impose on law firms to 5% of turnover and to from £50k to £805k for individual solicitors depending on their gross income. TLS said the proposed increases were 'excessive and unjustified'. It argued that turnover was not a fair or reliable indicator of a firm's profitability, and that gross income would fail to reflect individuals' economic circumstances.

Paper from Exeter University criticises SRA guidance on reporting serious misconduct. It says current guidance falls short in several areas including legal correctness, when lawyers should report concerns, client confidentiality, legal professional privilege, pressure from clients to facilitate unlawful activity or behave unprofessionally, and reporting within organisations. The SRA is considering the points raised**.**

Non-practicing solicitors to be charged £20 to stay on roll. The SRA had originally estimated the charge would be £30 or £40. The £20 charge is the same as it had been in 2014 when the annual keeping of the roll exercise was discontinued.

SRA announces plans to increase number of senior ethnic minority staff. The SRA's latest report on its ethnic minority pay gap showed the median figure falling from 15% to 12.7%. While the SRA said it was pleased about this reduction, its gap remains higher than the national average median gap of 2.3%. Currently 8% of SRA senior staff are from ethnic minorities. In response the SRA has published a senior ethnicity inclusion action plan which intends to double ethnic minority representation among senior staff over the next five years. The SRA expressed disappointment that its gender pay gap had grown for the third year in a row with the median figure now 11.2%. The UK average gender pay gap is 15.4%.

SRA undertaking a staged review of 2,500 firms' compliance with transparency rules. An initial review of 500 websites showed a low level of full compliance. The SRA now plans to use its enforcement powers, including its new fixed penalty notices and fines, to tackle persistent offenders. **Separately, LeO has carried out research on the transparency of legal providers' complaints procedures.** It found that the transparency rules' introduction in 2018 had not significantly reduced the number of premature contacts it received from clients.

SRA issues new guidance for immigration solicitors following a review of 70 firms. The review found evidence of poor keeping of records, a reluctance to report potential misconduct by individuals despite this being a regulatory requirement, and issues with case handling and clients being able to review case documentation. The SRA is taking disciplinary action against 10 firms as a result.

SRA, Access to Justice Foundation and TLS win £120k Government grant to support tech-enabled dispute resolution. The joint project, which the SRA expects to also involve the Law Council of Wales, will start in September 2023 and run for 12 to 18 months. It will work with consumers and public representative groups to explore the benefits of and barriers to using online dispute resolution.

TLS launches its new National Board for Wales. The Board will undertake local decision making and intelligence gathering that reflects Wales' ongoing divergence from England on legal and political policy.

SDT CEO resigns following loss of current premises. Following the SDT's landlord's withdrawal of an offer for a 10-year lease, the SDT is likely to have to leave its current premises by September 2023 and will need to find new accommodation. To assist the SDT in doing so, the LSB approved an increased 2023 operating budget for it of £4.3m, an increase of £1.2m from its previous proposal. The extra £1.2m will be covered by increases to solicitors' PCFs. The SDT's CEO, Geraldine Newbold, subsequently resigned. Ray Dhanowa is acting as interim CEO while a full-time replacement is sought.

LeO predicts backlog of unopened cases could be fewer than 700 within 18 months following a 55% increase in the number of complaints it resolved in the past year. **LeO seeks 9.6% budget increase to address costs inflation and provide 8% pay increase to retain staff.** TLS criticised the proposal and said an 8% pay increase was concerning as some parts of the legal profession had not had an increase in fees for many years. CLC wanted more assurance about LeO's ability to control costs. The Bar Council would like LeO to reduce its budget to pre-2020/21 levels in due course.

LSCP paper says regulators will need to undertake research to ensure that consumers were provided with meaningful data about law firms' prices, services and quality that is useful to them. Experience in other sectors showed regulators would need to dedicate resources to this work and collaborate.

Market developments, intelligence and research

ONS data showed UK economic output fell 0.3% between the second and third quarter of 2022, a larger fall than the initial estimate of 0.2%. In the third quarter of 2022, the UK economy was 0.8% below its level in the final quarter of 2019 prior to the pandemic. Other G7 economies have regained ground lost during the pandemic.

City lobby group, TheCityUK, reports that UK legal sector revenues grew 12.5% to £41bn in 2021/22. The UK's largest law firms generated revenues of £31.4bn in 2021/22. The sector now employs 375k people, with two-thirds based outside London. More than 25% of practising certificate holders in England & Wales now worked in-house.

Thomson Reuters' report says top law firms continuing to hire and trying to avoid significant layoffs. Firms were waiting out the current economic situation and were reluctant to lay off staff following their experience of rehiring lawyers after the 2008 financial crisis. **Workers in private sector legal and professional services firms experienced dramatic increases in pay during 2022** as a result of a combination of labour shortages, a large increase in demand for legal and professional services, the increasing role of higher-paying US firms in the London market and the weakness of the pound against the US dollar.

iResearch Services report says law firms ahead of firms in other professional services sectors on equality, diversity and inclusion initiatives. The report found 86% of law firms had run EDI initiatives compared to 73% of accountancy firms, 57% of consultancies and 55% of architects. It also found that the regulatory requirements law firms were subject to, such as those set by the SRA and ICAEW, were major drivers of law firms' greater transparency on these issues. EDI reporting in other sectors in the UK is voluntary. **One-third of employers on Social Mobility Foundation's (SMF) Top 75 index of employers promoting social mobility are law firms.**

City of London Corporation's Socio-Economic Taskforce says law firms well-placed to set socio-economic targets because of SRA diversity data collection requirements. The Taskforce called for 50% of senior leaders across the UK finance and professional services sector to have non-professional backgrounds by 2030. Currently almost two-thirds of senior leaders in the UK's top law, accounting and financial services firms come from professional family backgrounds compared to 37% of the UK population.

KPMG report says class is bigger barrier to career progression than gender or race. The report looked at the average time it took 16,500 KPMG partners and employees to be promoted taking account of gender, ethnicity, disability, sexual orientation and socio-economic background. It found that socio-economic background, measured by parental occupation, had the strongest effect on how quickly an individual was promoted. Individuals from lower socio-economic backgrounds took on average 19% longer to progress to the next grade.

Linklaters and Allen & Overy launch apprenticeship schemes. The schemes will each see six school leavers train become fully fledged lawyers at the firm. Meanwhile, seven apprentices at Eversheds have qualified as solicitors.

Interim progress survey says nine out of ten chambers have adopted at least one recommendation from the Bar Council's Race at the Bar report. One-third of respondents had addressed all four priority areas highlighted in the report: access, retention, progression and culture.

Ninety-five King's Counsel appointed - the smallest number in 10 years. The cohort includes 94 barristers and 1 solicitor (there were 208 applicants in total). 36 are women (78 applied), 14 are from an ethnic minority (43 applied), 6 are disabled (19 applied), and 8 are gay or bisexual (17 applied). There were only 8 solicitor applicants (compared to 21 in 2021).