News Round Up

(covers 3 March to 6 April 2023)

Top stories

The Law Society (TLS) says Government budget 'a missed opportunity for justice'. Justice spending will rise from £9.4bn in 22/23 to £9.8bn in 23/24 and £10bn in 24/25, below the rate of inflation. TLS was disappointed at the level of funding and noted it would only take an additional £30m to bridge the gap between Government's current proposals for solicitors' criminal legal aid funding and the independent review's recommendations, which TLS says would help address the court backlog.

IRN Legal says the legal services market should grow steadily in 2023, with corporate law the main driver. Family and probate law should be strong and commercial property should grow later in 2023. The market grew by 6.3% to £43.9bn in 2022, of which £31bn (up 10%) was generated by the top 100 firms, with £17.2bn (up 8.7%) generated by the top 10. Legal service prices rose by 5.2% in 2022 compared to 5% in 2021.

Bar Council (BC) Chair says barristers should be cautious about publicising court victories. Nick Vineall KC's comments came after over 100 lawyers declared they would refuse to act for the fossil fuel industry. The BC Chair warned barristers that publicising court victories risked compromising the Bar's independence and creating a public perception of bias or support for a cause. He also backed the cab rank rule. The Bar Standards Board (BSB) subsequently said if a self-employed barrister receives instructions and they are appropriate for the barrister to accept based on their experience, seniority and specialisms, they are obliged to accept them regardless of their views about the client or their cause. This ensures that everyone has access to legal advice. Kirsty Brimelow KC, Chair of the Criminal Bar Association (CBA), said the declaration by Lawyers are Responsible might be well-intentioned but was 'ill-thought out' and would not legally empower those with actions against corporations causing environmental damage. **Estelle Dehon KC, co-chair of the BC's climate crisis group, called for a debate on how the cab rank rule should apply if barristers object to representing fossil fuel companies** and noted that the BC and TLS were working on guidance in this area, which should be available within the next year.

BC and TLS criticise PM for referring to 'lefty lawyers'. The Prime Minister responded to criticism of the Illegal Migration Bill from the Leader of the Opposition by saying he was 'just another lefty lawyer standing in our way'. Separately, an e-mail, purportedly from the Home Secretary, was sent out by the Conservative Party which said 'an activist blob of left-wing lawyers, civil servants and the Labour Party' had prevented the Government from stopping small boat crossings. The Conservative Party subsequently said the e-mail had not been seen by the Home Secretary before it was sent. BC Chair said the PM's comments and the e-mail showed 'a startling and regrettable ignorance about the role of lawyers in society'.

TLS raised concerns with the Home Secretary about the language used in Government communications about immigration solicitors.

Political developments

BC and TLS criticise Government's Illegal Migration Bill. The BC briefed MPs ahead of the bill's second reading on its concerns about the speed of its introduction and the lack of consultation. It said features of the bill ran counter to normal conceptions of the rule of law, particularly in respect of the ability to obtain legal advice and the courts' jurisdiction in the early stages of detention. The BC also raised concerns about the bill's compliance with the European Convention on Human Rights, its proposals' efficacy, and its overall effect on the right to seek asylum. TLS said the bill would likely not comply with international law and, if passed, 'would rock the UK's standing as a reliable nation that upholds its international responsibilities, which has underpinned its position as an attractive hub of global investment and a bastion of the rule of law'.

Joint Committee on Human Rights says a new human rights ombudsman is not required and could overlap with existing bodies. However, the Committee found existing ombudsmen needed to focus more on human rights. The report also called on the Government to create a single public service ombudsman for England.

Powers of Attorney Bill backed by MPs. The private member's bill will allow lasting powers of attorney to be made and registered electronically and amend the Powers of Attorney Act 1971 so chartered legal executives can certify a copy of a power of attorney.

National Legal Service partly funded by a levy on larger solicitors' firms and barristers proposed at Legal Action Group event. Other proposed sources of funding include a levy of court and hearing fees in the High Court and above and increased Government funding of the legal aid system.

CBA unhappy over Government delay on final part of deal that suspended industrial action. CBA Chair said part of the agreement about special and wasted preparation should have come into force last month, but the statutory instrument required had not been laid. Minister Mike Freer MP said the Ministry of Justice (MoJ) was finalising the policy and it would be laid in a few weeks. The CBA did not say if it would resume industrial action because of the delay.

Government announces LawtechUK programme to continue. LawTechUK will receive £3m in funding and be run by Legal Geek, a global network and events organiser, and CodeBase, a tech incubator. Its focus will shift from 'Big Law' to access to justice for citizens and small businesses. **A new LawTechUK report** said 'a lack of collaboration' and differences in approach between tech firms from legal and non-legal backgrounds were hindering lawtech development, and new approaches were needed on attracting investment, sharing data, and supporting entrepreneurs in navigating regulation. The report called for the creation of a single body to assist lawtech entrepreneurs.

Government consults on mandatory mediation in low-level family court cases. Separating couples would have to attempt to agree child custody and financial arrangements through a qualified mediator, with court action being a last resort. 69% of the first 7,200 users of the mediation scheme reached whole or partial agreements. The MoJ said mandatory mediation was likely to reduce demand for legal services providers, and the mediation sector would benefit from an additional 25,000 cases a year. TLS criticised the proposals and said the most effective way to get people to choose mediation was to provide them with early legal advice, so they would be sure mediation was best for them.

Government to review whistleblowing framework. It will look at the current regime's effectiveness and protections for those who reveal wrongdoing in the workplace. It will cover who is protected, the availability of whistleblowing information and guidance, and how employers and prescribed persons respond to disclosures.

Government publishes AI white paper. The paper sets out its new approach to regulating AI, which is intended to build trust in technologies and encourage innovation. Regulators will be required to develop tailored approaches for how AI is being applied in their sectors. Regulators will be expected to issue guidance in the next 12 months. The paper endorses the concept of a multi-regulator sandbox.

Latest compensation scheme for postmasters announced. The scheme will award a maximum of £10,000 for reputational damage to those postmasters who suffered severe trauma. The new scheme has faced criticism from affected postmasters. The minister who approved the new scheme has referred it to the Group Litigation Order independent advisory board, which is now reviewing it.

TLS calls on Government to extend 'full expensing' corporation tax break to law firms to help them invest in IT. Law firms which do not pay corporation tax are currently unable to use the tax break. TLS said extending it to all law firms would aid further investment in the sector.

Wales

Welsh Government (WG) consults on unified tribunal system. While most powers over the Welsh justice system are reserved, Wales has several devolved tribunals, each with its own legislation and varying supervision arrangements.

WG to map provision of immigration advice in Wales. It will survey businesses looking to recruit from overseas and people resident in Wales on visas about their experiences of the immigration system and their ability to access advice and support. The results will support further work about immigration services in Wales.

Senedd refuses consent for Retained EU Law Bill. The Counsel General for Wales said the proposed legislation 'threatens food standards, environmental protections, workers' rights and business and consumer certainty' and would allow the UK Government to legislate in devolved areas. The Scottish Parliament has also withheld consent for the Bill.

Solicitors Regulation Authority (SRA) to run pilot version of SQE1 in Welsh in June. There is a £250 cash incentive for those who take part.

Regulatory developments

SRA finds some in-house solicitors struggle to balance duties with employers' priorities. It surveyed over 1,200 private and public sector in-house lawyers. It estimates there are over 34,500 in-house lawyers in England and Wales. Most said pressure from their organisation did not affect their ability to provide objective and impartial advice or act ethically. However, 5% of respondents had experienced pressure to suppress or ignore information that conflicted with their regulatory obligations and 10% said their obligations had been compromised by the need to meet organisational priorities. 10% also said they did not have enough time for training and development and 35% of senior counsel said they found it difficult to secure more budget to invest in their teams. The SRA said it would do more to support in-house solicitors, including publishing new guidance and resources and running events to share best practice and find out where help is needed. **A group of general counsel (GCs) said the SRA's report understated the in-house environment's risks** and failed to understand their causes. The GCs said the SRA should re-evaluate its conclusions and increase support for in-house lawyers. The GCs also said the SRA should engage with firms employing in-house lawyers about regulatory requirements and duties and that their lawyers' contracts should include a summary of their professional duties**.**

BC continues to question LSB remit. BC Chair said the BC remained in dialogue with the LSB about its role. The BC did not believe the LSB should be seeking to 'reshape legal services', in part because it had no role in relation to unregulated legal services and developing a strategy for the legal sector was not a function given to it by the Legal Services Act 2007. The BC would continue to press the MoJ to review the LSB. In its 2023/24 business plan, the LSB said its activities for the coming year were clearly within its statutory remit.

BSB publishes 2023/24 Business Plan which includes a series of reforms intended to transform how the BSB carries out its regulatory work and ensure that it is regulating proactively and anticipating risks and opportunities. The BSB also published a letter to the LSB and an accompanying action plan setting out its response to the LSB's 2022 assessment of its performance.

Bar Training Course (BTC) provider pass rates vary widely. A BSB report analysed the performance of 20 training providers. The Inns of Court College of Advocacy had the highest pass rate, 92.5%, and was significantly ahead of its nearest competitor at 61%. More than half of the 20 providers failed to score above 50%. **The BSB also published reports about the BTC reforms.** Providers said the reforms allowed them to increase choice and reduce costs. Average fees have decreased substantially since the BTC's introduction, but 78% of Bar students said training costs were too high.

Digital comparison tool review pilot 'will disproportionately affect black barristers'. At a Black Barristers Network event**,** the BSB heard that criminal defence, family, and immigration law barristers were more vulnerable to complaints being made against them and these areas of law had more Black and ethnic minority barristers. Concerns were also raised about whether online reviews were appropriate for barristers' work due to its complexity, the cab rank rule and barristers' ability to respond to negative reviews. The BSB said it was not requiring barristers to take part in its pilot, which runs until September 2023.

TLS opposes SRA plan to ban firms being paid upfront. TLS said the change could harm solicitors working on fixed fees, and there was no evidence it was needed to protect clients. TLS also opposed a proposal to remove the requirement that solicitors providing pro bono services outside a firm or organisation should notify the SRA, as the current notification requirement was not onerous and removing it may lead to solicitors acting outside their areas of expertise.

Council for Licensed Conveyancers (CLC) revises its ethical standards to include requiring conveyancers to know their customers and treat them fairly, keep their money safe, communicate openly and truthfully, and act in their best interests. Its existing diversity and inclusion principle will be extended to cover clients. **CLC fines conveyancing firm PCS Legal £33,000 for complaints and accounts breaches.** The firm failed to properly deal with complaints when its caseload increased during the pandemic.

Unregulated firm run by CILEX member "conducted litigation" in possession claim. A legal executive was found to have broken the law by performing activities the court considered to be conducting litigation, but was not found to be in contempt as the judge said she did not know she was committing an offence. Mr Justice Cavanagh said the law was unclear on what 'conducting litigation' meant.

CILEx Regulation (CRL) appoints Victoria Purtill as acting CEO following the departure of Carilyn Burman.

The Institute of Chartered Accountants in England and Wales (ICAEW) CEO Michael Izza to retire by the end of 2023.

SRA publishes annual SQE reports. The reports said the SQE was well-implemented and successfully determined candidates' competence. The SQE's independent reviewer found the overall delivery of the exams was at least satisfactory, and in some cases, good; the SRA and Kaplan were taking steps to improve performance and the SRA will assess the developing training market in its three-year evaluation. Candidates with qualifying work experience were most likely to pass SQE2 and candidates with better university degrees and apprentices had higher pass rates. The achievement gap between white and ethnic minority candidates persisted, but there was no evidence of systemic bias and the independent reviewer said reasonable adjustments for disabled candidates were working well. SQE fees will increase by an inflation-linked 11% from September 2023. **The City of London Law Society (CLLS) noted that the level successful SQE1 candidates were expected to attain was that of a 'day-one solicitor' rather than a 'day-one trainee' and urged firms not to drop trainees or apprentices who failed SQE1 at the first attempt.**

SRA to increase practising fees. Fees would rise to address general inflation, enable the SRA to handle new demands on anti-money laundering and sanctions compliance, and ensure it has sufficient reserves.

SRA introduces tougher targets to reduce investigation delays. From July 2023, the SRA will have a new KPI that its first-stage complaints review team should make initial decisions about 80% of the approximately 11,000 complaints it receives annually within two months. The SRA has also set a new KPI for resolving cases it fully investigates (1,800 last year). From July 2023, 70% of these should be concluded within 10 months. SRA CEO Paul Philip said investigations and referrals to the SDT were taking too long, and the SRA would use its resources to improve its timeliness and efficiency.

SRA consults on cap on charges for financial mis-selling scheme claims. Under the proposals, which are similar to the Financial Conduct Authority's (FCA) limits, solicitors would be able to charge no more than £10k for claims worth more than £50k, £7.5k for claims between £25k and £50k, and £420 for all claims worth less than £1,500.

New solicitor apprenticeship scheme introduced for paralegals training with CILEX and the CLC. Damar Training said the three-year programme would increase the availability of apprenticeships for persons without a law degree. Candidates would need to be paralegals with an apprenticeship or other qualification or have CILEX or CLC qualifications. There is also an 18-month apprenticeship programme for graduates with law degrees or a Graduate Diploma in Law.

LeO aims to cut case resolution times in half by March 2024. Its average time to resolve cases will reduce to between 132 and 187 days from its current average of 289. This will be due to a fall in the time it takes to initially look at cases, to 45-100 days from 202 days. LeO's workload is set to reduce due to its new scheme rules, which came into effect on 1 April 2023.

Market developments, intelligence and research

Search Acumen said property transactions were up from 714k in 2012 to 1.3m in 2022 but the number of conveyancing firms has fallen by 10%. The top 50 firms accounted for 20.5% of transactions at the end of 2022. The growth in transactions and the fall in the number of firms meant lawyers were struggling to meet demand.

A group of City firms, including Herbert Smith Freehills, will increase contributions to employees' pensions to at least 7% of salaries in response to concerns about low-paid workers not saving enough and the cost-of-living crisis exacerbating the situation.

Linklaters meets global gender diversity target for partner promotions. In its latest appointment round, 17 of 41 (41%) of Linklater's new partners were women. Its target was 40%. The firm said it also met an annual 15% target for ethnic minority partners at its UK and US offices. **Freshfields overall and partner gender pay gaps both increased in 2022 from 52.1% to 53.2% and -2.6% to 12.2%**

respectively. Its ethnicity pay gap also increased from 50.5% to 55.9%. Its disability and LGBTQ+ pay gaps decreased significantly from 52.5% to 8.8% and 33.4% to -2.8% respectively. **Clifford Chance's overall gender pay gap was 63.5% down slightly from 64.9% last year.** Its overall ethnicity pay gap was down from 53.6% to 45.6% and its disability and LGBTQ+ pay gaps were 12.8% (down from 34.4%) and 25.5% (down from 31.3%)**. Both Freshfields and Clifford Chance reported on their socio-economic pay gaps,** which between professional and lower socio-economic background were 31.3% and 46% respectively.

TLS's gender pay gap shrinks but its ethnicity pay gap grows. Its gender pay gap was 4.7% in 2002, down from 6.8% in 2021. Its ethnicity pay gap increased from 10.2% in 2021 to 15.6% in 2022. TLS said this was probably because fewer BAME staff joined in 2022, fewer of them were promoted to higher-paid roles and their pay increases were lower. **The Government Legal Department is looking at why its mean bonus pay gap (4.59%) favours men** despite its mean gender pay gap (-3.35%) decreasing. The Civil Service's average mean gender pay gap in 2022 was 8.5%.

Graduate recruiters dispute claim law firm diversity schemes are just for show. Some recruitment experts said the comments from Dr Louise Ashley of Queen Mary University did not consider new hiring polices which have resulted in a more diverse intake of trainees, who would take time to progress to senior roles. It was pessimistic to assume this would not happen. The CLLS said firms faced pressure to be more diverse but were also changing because it was the right thing to do.

Black Talent Charter seeks to drive race equity at the Bar. The Charter supports organisations, including barristers' chambers, by (1) providing information and initiatives on recruiting, retaining and promoting Black talent and (2) helping them develop action plans and targets for increasing Black representation at all levels. It also assists Black professionals to prepare for senior positions.

Barristers with Lived Experience of Mental Illness (BLEMI) network launched. BLEMI aims to support barristers with experience of mental illness. It said the Bar's wellbeing agenda, which tends to assume individuals do not have mental illnesses, could inadvertently exclude barristers who do.