News Round Up

(covers 7 April to 19 May 2023)

Top stories

Alex Chalk KC MP appointed Lord Chancellor and Secretary of State for Justice. Other MoJ ministers are: the Rt Hon Edward Argar MP (Minister of State), The Rt Hon Damian Hinds MP (Minister of State), Mike Freer MP (PuSOS) and Lord Bellamy KC (PuSOS). **New Lord Chancellor makes no commitments on Bill of Rights Bill or SLAPPs legislation** Mr Chalk said he would review the MoJ's work before setting out plans.

Government to amend Economic Crime Bill to include new offence of 'failure to prevent fraud'. The measure would require organisations where fraud had been committed to demonstrate they had 'reasonable measures in place to deter the offending' or face an unlimited fine. It would also provide the SRA with a 'proactive information request power' for economic crime. The Serious Fraud Office said the new law would be a 'game-changer' as it would bring the law on fraud in line with bribery. SMEs will be exempt from the new offence but will be covered by the current legal framework. Some specialist lawyers warned that the 'failure to prevent' approach as applied to bribery or tax evasion may not be applicable to fraud, and it would be necessary to see guidance about 'reasonable prevention measures'. **Nick Vineall KC reaffirmed the Bar Council's opposition to the addition of a regulatory objective** promoting the prevention and detection of economic crime to the Legal Services Act as it does not consider it to be the role of legal professionals to prevent or detect crime, and that such an objective would be incompatible with lawyers advising and representing their clients.

The Rt Hon Suella Braverman KC MP accused of breaching barristers' code over 'racist' language. Lawyers and faith organisations lodged the complaint with the BSB claiming the Home Secretary, a qualified barrister, breached the BSB's code of conduct with 'racist sentiments and discriminatory narratives'. Ms Braverman has not practiced as a barrister since becoming an MP in 2015, but she is still subject to rules governing barristers' conduct. The BSB said it did not comment on individual complaints.

Political developments

Government proposals to enable ministers to ignore ECHR interim injunctions attacked by legal professional bodies. Amendments to the Illegal Migration Bill would prevent ECHR injunctions stopping deportation flights. TLS said a refusal by the UK to comply with an ECHR ruling would be a clear and serious breach of international law. Bar Council Chair Nick Vineall KC said the proposals would undermine the rule of law. Former Attorney General Sir Geoffrey Cox MP said the Commons was being asked to sanction the possibility that ministers will deliberately disobey international law. Senior judges said the bill, if passed, would add to pressures on immigration and asylum tribunals. The bill is now in the Lords.

TLS welcomes Government rethink on retained EU law. The Government will publish 600 pieces of retained EU law it will remove from the statute book rather than the 4,000 initially planned. TLS was pleased the Government had listened to it and other bodies but also said it should now confirm an extension of the deadline for reviewing legislation so there was more time to consider any repercussions.

MoJ to allow CILEX lawyers with seven years' experience to be Crown court and upper tribunal judges. CILEX lawyers are already eligible to sit in several judicial roles. The MoJ said providing more opportunities for up to 4,500 experienced lawyers from more diverse backgrounds would strengthen the judiciary and the rule of law. The Bar Council also supported the change. Three-quarters of CILEX lawyers are women, 85% are state-educated and 16% are from ethnic backgrounds.

Foreign Office announces new round of sanctions to target 'financial fixers' linked to sanctioned oligarchs Roman Abramovich and Alisher Usmanov. **First legal challenge against the Government over sanctions filed** by Eugene Shvidler, an associate of Roman Abramovich and a US/UK dual citizen, who is challenging the Government's assessment that he is 'an involved person' in Russia's war by his association with Abramovich and the steel company Evraz. The Government's application of sanctions has been criticised by some lawyers as too sweeping and insufficiently based on evidence, thereby affecting Russians without links to Vladimir Putin or the Russian government. **OFSI has set up a quarterly forum so lawyers can ask questions about sanctions**.

MoJ report on legal advice agencies' work during the pandemic reveals their struggles. It found not-for-profit legal advice organisations which received a £2.2m grant between April 2021 and March 2022 spent 80% of it on staff costs. Advice agencies are struggling to recruit staff as law students look for more lucrative jobs. The Government's Help Accessing Legal Support Grant received an extra £1.6m to boost services until June. The £10.4m Improving Outcomes Through Legal Support Grant will run from July 2023 to March 2025.

Bar Council welcomes confirmation that fee increases for prosecution work will apply to hearings in existing and new cases from 2 May 2023. Nick Vineall KC said the disparity between prosecution and defence fees had led to a shortage of prosecutors.

Major project to examine legal ethics after the Post Office scandal. The project, funded by the Economic and Social Research Council, and led by Dr Karen Noakes of UCL, and Professor Richard Moorhead and Professor Rebecca Helm at the University of Exeter, will seek to understand the ethical problems lawyers face, why they make mistakes, how they can avoid them, and what regulators and others can do. **Exeter University paper submitted to Post Office scandal inquiry highlights risk of lawyers absorbing their clients' view 'without sufficient independence and critical detachment'.** The paper highlighted the 2013 Post Office-commissioned review by Brian Altman KC of the prosecutions of postmasters, which found no reason to stop them. It concluded that regulators should find ways to emphasise the need for independence when lawyers conduct reviews for clients**.** **Post Office awards Fujitsu new contract worth £16.5m to run Horizon until May 2025**. It follows a £42m two-year deal in 2021. The contracts' combined value is over five times larger than the compensation provided to wrongly convicted postmasters. **The Post Office acknowledged that only £217k (around £1k each) was allocated to some postmasters for legal and other expert advice**. The Post Office has covered legal fees in 198 of 1,924 settlements.

Regulation of Legal Services (Scotland) Bill to: (1) Place legal duties on Scottish legal regulators to be more transparent and accountable, (2) allow Government ministers to review regulators and require regulators to perform better or face financial sanctions if they do not regulate in the public interest, (3) prevent non-qualified persons from calling themselves 'lawyers' and (4) extend the scope of legal regulation and complaints processes to all persons, regulated or not, who provide legal services. The Law Society of Scotland said the bill threatened the profession's independence and subsequently signed the Commonwealth Law Conference's 2023 Goa Declaration on protecting judicial and legal professions' independence.

Wales

Sir Gary Hickinbottom succeeds Sir Wyn Williams as new President of the Welsh Tribunals. The Welsh Government plans to publish a white paper about establishing a single unified tribunal system for Wales.

Cardiff University launches Digital Adoption Survey for the Welsh Legal sector. The survey will gather data about legal services in the digital economy in Wales and inform the work of the Welsh Government. It runs until 9 June.

Flintshire County Council warns residents about solicitors encouraging social housing tenants to claim for disrepair. In some cases, significant amounts have been run up by firms offering work on a no-win, no-fee basis, but tenants can be liable for costs if they do not pursue their claim. Some firms are alleged to have advised tenants not to allow Council employees to carry out repairs, which can risk breaching tenancy agreements.

Regulatory developments

Bar Council Chair Nick Vineall KC says cab rank rule is 'here to stay' and is the barristers' equivalent of the Hippocratic oath. He said people with unpopular causes should not have to persuade a barrister to take their case. **BSB Director General Mark Neale questioned whether barristers should substitute their own ethical judgement** when instructed to represent a client with an arguable case. The BSB said it would not act against barristers who have committed not to prosecute climate protestors or act against fossil fuel companies until they refuse instructions.

The Times apologises and pays substantial libel damages to Dinah Rose KC. The paper had alleged that Ms Rose had wrongly used the cab-rank rule to justify acting for the Cayman Islands Government in a case on same-sex marriage.

BSB appoints Tim Grey as new Chair of its independent decision-making body (IDB). Mr Grey previously served on the IDB and is a self-employed barrister specialising in fraud, regulatory and disciplinary law.

BSB invites tenders for external review of its enforcement system. The review will look at whether its processes are fit for purpose, facilitate sound decision-making and could be more efficient. The BSB hopes to finish the review by the end of 2023. This review follows an earlier BSB one, which found it was failing to meet targets for referring cases and completing investigations, and the LSB's 2022 performance review, which found the BSB provided insufficient assurance on enforcement.

BSB bans online exams following allegations of 'malpractice'. The ban follows a temporary suspension of civil and criminal litigation assessments in Bangladesh and Pakistan and affects both UK and overseas students. The BSB is investigating the allegations and said the ban was needed to protect the assessments' integrity.

National Crime Agency (NCA) denies reports in the Guardian that it has a 'target list' of 100 solicitors suspected to be helping traffickers abuse modern slavery law to secure asylum for people entering the UK. The NCA said it regularly assessed the scale of threats posed by professional enablers of crime. TLS said everyone should have access to legal advice and representation, that modern slavery victims were very vulnerable clients, and that it would support solicitors with their regulatory and ethical obligations. The SRA has not commented.

TLS and SRA consult on increase to practicing fees. The SRA is seeking a £10m increase in its budget for 2023/24 taking the total to just under £98m, of which £67.6m will come from practicing fees. TLS is understood to be seeking an increase in its budget from £32.8m to £35m. The SRA intends to increase practising fees by 7% (£11) in 2023/24 to cover inflation. It expects practicing fees to increase overall by no more than inflation plus 2% between 2023-26. Compensation Fund contributions for individuals will stay at £30 in 2023/24 and fall by £30 to £660 for firms. **SRA consults on Corporate Strategy for 2023-26.** Its mission will be to enhance confidence in legal services. It plans to focus on: high professional standards, risk-based and proactive regulation, innovation and technology and being an authoritative and inclusive organisation that meets the needs of the public, consumers, its regulated community and its staff.

SRA plans to discuss next steps on potential transfer of regulation of legal executives with CILEX. CILEX were in talks with CILEx Regulation (CRL), and the SRA would speak to CILEX after those discussions. CILEX would first consult with its members about changing its regulator, and the SRA would then consult with solicitors about expanding its regulated community. The news follows the end of the LSB's investigation into CILEX and CRL, which confirmed that CILEX can explore redelegating its regulatory functions. **CRL consults on its future.** Undertakings given by CILEX and CRL following the LSB's investigation allow CRL to consult on options for changes to its regulatory arrangements and whether a change of regulator is necessary. The consultation ends on 26 June.

SRA expects to use proposed power to demand information from solicitors about economic crime around 750 times a year. The SRA can already require firms to provide it with certain documents ahead of inspections under the Money Laundering Rules, but these do not cover around 3,200 law firms. The MoJ said the proposed powers were necessary for SRA to prevent and detect economic crime.

LSB approves SRA health and wellbeing rules requiring firms to treat staff fairly and with respect. Managers must challenge behaviour that does not meet this standard. The LSB said the SRA should provide definitions of bullying, harassment and discrimination and asked for guidance to prevent unintentional barriers to reporting. The rules will cover firms' employees and contractors, consultants and experts engaged by them. The LSB also approved changes allowing the SRA to consider anything, including health issues, indicating a solicitor may not be able to meet regulatory obligations. The SRA has now issued guidance about the new rules.

LSB approves changes to SIF. TLS was pleased the fund would stay open but was disappointed the LSB had not required the SRA to have a compulsory levy on the profession to ensure its viability. The SRA must consult if it decides a levy is needed.

TLS guidance says climate issues may be 'valid considerations' for law firms in deciding whether to act for potential clients. It said access to justice and the right to legal representation were fundamental, but firms could consider climate issues that could affect their reputation or were in conflict with their stated values when deciding to represent a client. If a firm decided not to accept instructions, it should explain why to the prospective client in writing. Firms should not make misleading claims about their climate change credentials. TLS confirmed conveyancing solicitors' overall duty to advise on climate risks, but said they should only do so if they are sufficiently knowledgeable or qualified.

IPReg's new Code of Conduct and associated rules come into force on 1 July. The Code of Conduct and Standard Operating Procedures were approved by the LSB in February. Guidance supporting them will be updated periodically.

OPBAS report says legal sector regulators need to improve how they tackle money laundering. It said even 'largely effective' legal and accountancy regulators should strive to improve. It praised the SRA for raising its fining powers to £25k. OPBAS found two-thirds of regulators were only partially effective or ineffective in taking predictable and proportionate supervisory action.

FCA takes steps to improve whistleblowers' confidence including providing more detail about how it handles their information and engaging with the Department for Business and Trade to support a review of whistleblower legislation.

Market developments, intelligence and research

Citizens Advice (CA) says households face a 'debt timebomb' and the debt advice industry is a 'wild west' with lax regulation. 51% of people CA is helping with debt have negative budgets (i.e. their income cannot cover essential expenses, and so debt becomes unavoidable) compared with 36% in 2019. CA said some debt advice firms were misleading consumers into agreeing unaffordable debt reduction plans.

Bank of England raises interest rates to 4.5% as it said inflation would stay higher for longer and the economy would perform better than previously expected. **UK avoids technical recession** as economy grows 0.1% in first quarter. **Average house prices were down 0.3% in April** and overall are unchanged from a year ago.

London Commercial Court caseload declines. The court saw a 9.9% drop in the number of claims issued in 2020/21. 69% of cases were classed as 'international' in 2021/22 down from 74% in 2020/21. The reduction in London claims was partly offset by more claims being started in Circuit Courts. There had also been a significant increase in arbitration-related applications. **A record number of Russian litigants appeared in the Commercial Court** despite sanctions. The number of Ukrainian litigants, previously one of the largest, was zero.

Leading City and international firms promote partners at a similar rate to 2022. CMS promoted 16 in the UK, including 7 women. Eversheds announced 29 partnerships including 16 women. Allen & Overy appointed 36 new partners including 15 women. Clifford Chance elected 32 partners including 12 women and 39% of its US and UK partners are from ethnic minority backgrounds. Freshfields appointed 30 new partners including 16 women, 18% of its new UK partners were from an ethnic minority background, ahead of its target of 15%.

Largest survey of UK race inequality for over 25 years finds Britain 'not close to being a racially just society'. The Economic and Social Research Council funded project found a high prevalence of racial discrimination and inequality of outcomes in education, work, housing and police interactions. The report urged ministers to tackle 'substantial ethnic inequalities' in British life and institutions.

Resolution Foundation (RF) says low-paid workers most vulnerable to labour market abuses but least likely to take employers to court due to cost and lack of support. Only 25% of workers would seek help from an outside body if their employer breached employment law. Tribunals were not an option for all workers due to lack of knowledge, limited legal advice, backlogs and little gain. The RF recommended a single employment rights enforcement body be created.

Largest PI law firm working on ways to use Chat-GPT related technology. Fletchers already uses AI to help lawyers make case decisions and was now looking at applying Chat-GPT models to its data and using AI to make decisions in clinical negligence cases. It hoped this would reduce the gap between these cases high complexity and low value and so improve access to justice. **Thomson Reuters says 9% of large UK commercial law firms were using, or planning to use, Chat-GPT type technologies, compared to 3% in the US. New Zealand Law Society warns about Chat-GPT citing cases which do not exist.** AI can 'hallucinate' sources for several reasons including its training, the data it uses, programming and biases. **Law firms 'over-excited' about Chat-GPT risk data breaches.** Confidential client information inputted into Chat-GPT could reappear in responses to unrelated third-party queries. **CMA launches review of AI market** to ensure AI benefits businesses and consumers. The Prime Minister said the UK would seek to lead a global approach to regulating AI. The US, EU and China are developing AI regulation.

YouGov survey finds almost half of business leaders think AI could replace humans, but experts think job losses caused by mass adoption of tools like Chat-GPT would be limited. TLS President Lubna Shuja said lawyers would need to develop new skills to make the best use of technology while continuing to use the soft skills AI will not be able to automate.

TLS research shows solicitors score lower than UK average on positive measures of wellbeing and are more likely to be anxious. 76% of solicitors said they regularly worked over their contracted hours (46% in 2019). 5% had taken two weeks or more off for stress (1% in 2019). Three-quarters of solicitors said their employer was fair and equal (the figure was lower for women and ethnic minority solicitors). Dissatisfaction with career progression was greater amongst disabled solicitors. Both disabled and BAME solicitors were less likely to feel their job fully utilised their skills and that work was distributed fairly. **The Solicitors' Charity sees 50% rise in clients during the cost-of-living crisis.** It spent £1m on solicitors and their dependents facing financial and personal difficulties in the past year and saw a 60% increase in clients with mental health issues.

TLS study finds 64% of lawyers believe access to justice has worsened over the last decade. TLS's 2022 member survey also found almost the same percentage cited cost and reduction in legal aid as responsible for this change. TLS President Lubna Shuja said the right to access to justice was more difficult to uphold and blamed this on consistent underfunding of the justice system since the 2013 legal aid cuts. TLS research showed 61% of its members were concerned about the impact of Government policies.

Community Justice Fund (CJF) says not-for-profit legal advice sector faces a £32m financial deficit. Charities reported 'significant problems' in recruiting and retaining staff due to competition from better paid sectors and because the short-term nature of charity funding meant they could not offer sufficient job security.

Association of Consumer Support Organisations (ASCO) says Government should run awareness campaigns about legal expenses insurance (LEI). ASCO said LEI could provide more people with affordable access to justice than other means, but the Government, although positive about LEI's potential impact, had done nothing to promote it.

Law for Life-supported unbundled family law service had reaches new market and delivers positive results. The Affordable Advice Service (AAS) links litigants-in-person who cannot afford traditional legal services with a law firm for one-off advice at key points of the family law process. Users are charged £120. 75% found the AAS to be good value and 88% said it helped them make their case better.